

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1186.

145

No. 3, SPECIAL CALENDAR.

**AULICK PALMER, UNITED STATES MARSHAL IN AND
FOR THE DISTRICT OF COLUMBIA, APPELLANT,**

vs.

ROBERT M. THOMPSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 28, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

AULICK PALMER, U. S. Marshal in and for the District
of Columbia, Appellant,
vs.
ROBERT M. THOMPSON.

} No. 1186.

a Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus*.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Writ of Habeas Corpus, &c.*

Filed May 20, 1901.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. *Habeas Corpus*. No. 303.

To the Honorable Andrew C. Bradley, one of the associate justices of the supreme court of the District of Columbia:

The petitioner, Robert M. Thompson, respectfully represents:

First. That he is a citizen of the United States and a resident of the District of Columbia.

Second. That the petitioner is illegally and unlawfully restrained of his liberty and unjustly and unlawfully detained in the custody of Aulick Palmer, United States marshal in and for the District of Columbia, and such unlawful and illegal detention and restraint of liberty of the petitioner, and the action of said United States marshal in that behalf, is claimed by said marshal to have been done and taken under and by virtue of a certain alleged order or command of the Honorable Eli S. Hammond, judge of the district court of the United States for the western district of Tennessee, a true copy whereof is hereto annexed as part hereof and marked Exhibit "A."

The petitioner further says that the said alleged order or command to the said United States marshal was issued by the said judge with-

out any authority whatever, and that the same is null and void, and should be so held and considered by this court for the following, among other, reasons :

2 *a.* Because the papers and documents accompanying such alleged order or command failed to show that at the alleged trial therein referred to any witnesses were produced or testimony taken before the jury in said cause empannelled wherein this petitioner pleaded not guilty.

b. Because the papers and documents accompanying such alleged order or command fail to show that the said cause therein referred to was continued from term to term until the order therein referred to of April 22nd, 1901, was made, and the petitioner therefore avers that said cause was not continued from term to term, and thus kept alive, as by law and the practice of said court required, and that therefore the said court was without jurisdiction of authority to pass or make the orders therein referred to of October, 1900, and April 22nd, 1901.

c. Because upon the face of the so-called indictment returned against the petitioner, a true copy whereof accompanies said alleged order or command hereinbefore referred to, and a true copy whereof and the proceedings had thereon is annexed hereto as part hereof and marked Exhibit "B," it appears that the alleged offence herein set forth was barred by the statute of limitations.

d. Because the said section 5485 of the Revised Statutes of the United States, under which said indictment was found, was enacted into law by Congress on the 3rd day of March, 1873, subsequent to the date of the commission of the alleged offence by this petitioner, as shown by the letter of the Commissioner of Pensions to this petitioner, dated March 25th, 1890, hereto accompanying as part hereof and marked Exhibit "C;" and the petitioner says that the money

 referred to in said indictment and the property of this petitioner's wards came into this affiant's possession on, to wit, 3 July 1st, 1872, and not later; and this petitioner therefore says that the said section 5485 was an unconstitutional enactment, so far as the prosecution and indictment and trial of this petitioner thereunder was concerned, and that the said court, before which said alleged trial was had, had no jurisdiction or authority to hear, entertain, or determine the alleged offense set forth in said indictment, nor had the grand jury any power or authority to return any indictment for said alleged offense or hear any witnesses or receive their testimony in support of any presentment or indictment for the alleged violation of said section.

e. Because heretofore, to wit, on May 10th, 1888,, the petitioner was arrested and detained by one John S. Crocker in the jail of the District of Columbia for removal to the district court of the United States for the western district of Tennessee, presided over by the Honorable Eli Shelby Hammond for and on account of the identical matters set forth and contained in the alleged order or command hereinbefore referred to, and under which he is now detained and unlawfully restrained of his liberty, and upon said day aforesaid

the petitioner filed his application in this court, praying that the writ of *habeas corpus* might issue thereon; that the same was duly issued, a time fixed for a hearing thereon, and the said John S. Crocker duly made his return thereto, and such proceedings were had thereafter that a hearing upon such application, the return thereto, and the papers filed in said cause was had on the 5th day of June, 1888, before the Honorable M. Montgomery, then one of the justices of this court, when this petitioner, upon such application, was discharged; and this petitioner hereby refers to said cause,
4 known as No. 17139, criminal docket 17, of the files and docket of the supreme court of the District of Columbia, as part hereof, and will, so far as being necessary, read the papers, record, and proceedings therein at the hearing hereof, and also No 17128, crim. doc. 17, S. C. D. C., a copy of the same *are* hereto annexed as part hereof, marked Exhibit "D."

The petitioner therefore says that since the said discharge from custody of this petitioner, as herein set forth, there *has* been, to his knowledge, no new facts or circumstances which have happened or which appear of record that in any way change or affect his status as the same existed at the time of his said discharge, but that the same remains unchanged and unaffected by any order or proceedings taken or sought to be taken by the said district court aforesaid of the United States in and for the western district of Tennessee, and that therefore the decision and holding of the said justice of the supreme court of the District of Columbia in the said cause No. 17139 is, and ought to be so held by this court, *res adjudicata*, and this petitioner should not be held in custody or restrained of his liberty for the purpose of removing him to said district court of — United States or for any other purpose for and on account of the matters and things set forth and contained in said alleged order or command and the papers and documents accompanying the same.

f. Because, as this petitioner is advised, it is sought by the said district court aforesaid and the judge thereof to have this petitioner removed to the said district court aforesaid for judgment and sentence under and by virtue of section 1014 of the Revised Statutes of the United States, which has no application, as this petitioner is further advised, and therefore avers the fact to be, to the
5 alleged case of this petitioner as the record thereof now stands, and this court is without authority thereunder to order the removal of this petitioner to the said district court of the United States, or the United States marshal to detain this petitioner in custody and restrained of his liberty by virtue thereof.

g. Because the said order or command is informal, irregular, and not in accordance with law and the statutes in such case made and provided.

h. Because of other irregularities, informalities, and omissions apparent upon the face of the record and proceedings annexed to and made a part of the said alleged order or command.

The premises considered, the petitioner prays at the hands of the justice to whom this application is addressed, or any justice of the

supreme court of the District of Columbia, that the writ of *habeas corpus* may issue on this application, directed to the said Aulick Palmer, United States marshal in and for the District of Columbia, commanding him to have before your honor, at a day and place to be named in the order herein made, the body of your petitioner, together with the true cause of the detention of the petitioner and his unlawful restraint of liberty, to undergo and receive whatsoever your honor shall then and there consider of him in this behalf, and that upon a full hearing hereof this petitioner may be discharged from custody.

And this petitioner will ever pray &c.

ROBERT M. THOMPSON.

GEORGE MEIGS,
EDWIN FORREST,
For Petitioner.

6 Robert M. Thompson, being first duly sworn according to law, deposes and says: That he is the petitioner in the above-named petition, has read over the same, and knows the contents thereof; that the facts therein stated of his own knowledge are true, and the facts therein stated on information and belief he believes to be true.

ROBERT M. THOMPSON.

Subscribed and sworn to before me this 18th day of May, 1901.

[Seal of Court.]

J. R. YOUNG,

Clerk S. C. D. C.,

By R. J. MEIGS, JR., *Ass't Cl'k.*

(Endorsed.)

Let the writ issue as prayed, returnable before Justice Clabaugh Friday, 31st day of May, 1901, at 10 o'clock.

A. C. BRADLEY, *Justice.*

May 22d, 1901.

Let this petition be filed without deposit for costs.

A. C. BRADLEY, *J.*

7 In the Supreme Court of the District of Columbia.

In the Matter of ROBERT M. THOMPSON.

Petition for Habeas Corpus.

DISTRICT OF COLUMBIA, ss:

Robert M. Thompson, being first duly sworn according to law, deposes and says that he is a citizen of the United States and a resident of the District of Columbia, and the petitioner in this matter; that because of his poverty this affiant is unable to pay the costs of this suit or action which this affiant is about to commence, or to

give security for the same, and that affiant believes he is entitled to the redress he seeks by this suit or action, which is an application for a writ of *habeas corpus* to have this affiant discharged from the custody of Aulick Palmer, United States marshal in and for the District of Columbia, on the ground that he is illegally and unlawfully detained in custody by said marshal and restrained of his liberty, in violation of law and for the reasons in detail set forth in said petition, which, for the purpose of this application, is prayed to be considered as part hereof in connection herewith; that this affiant believes that he is entitled to his discharge from custody on such application for the reasons stated.

ROBERT M. THOMPSON.

Subscribed and sworn to before me this 18th day of May, 1901.

J. R. YOUNG,

Clerk S. C. D. C.,

[SEAL.]

By R. J. MEIGS, JR., *Ass't Cl'k.*

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EXHIBIT A.

Filed May 20, 1901.

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division Thereof. }

The President of the United States to the marshal of the District of Columbia, Greeting:

In pursuance of an order made by the United States district court for the eastern division of the western district of Tennessee, at Jackson, in said district, in the case of The United States against Robert M. Thompson, on the 22nd day of April, 1901, renewing the order of date 29th October, 1900, and certified copies of both of which orders are hereto attached and made a part of this capias, together with certified copies of the orders and papers mentioned in both said orders, which are also made part of the capias, you are hereby commanded to take the body of Robert M. Thompson, if it be found in your district, and him safely keep so that you have him before the judge of the district court of — United States, at a term of said court to be held for the district aforesaid at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1901, then and there to receive such sentence as the court may impose upon him under the conviction already had herein against him.

Herein fail not and have you then and there this writ. Witness the Honorable Eli Shelby Hammond, judge of the district court of — United States for the western district of Tennessee, under the seal of said court, this 22nd day of —, 1901, and the 124 year of American Independence.

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[Seal of Court.]

JOHN B. CLOUGH, *Clerk.*
 DAN. F. ELLIOTT,
Deputy Clerk.

EXHIBIT B.

UNITED STATES OF AMERICA, }
Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western District of Tennessee, in the Sixth Judicial Circuit of the United States, April Term, A. D. 1885.

The grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of said western district of Tennessee, in said circuit, upon their oaths present that Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee, and late of the circuit and district aforesaid, on, to wit, the 24th day of September, A. D. 1877, in the county of McNairy aforesaid and State of Tennessee, and in the circuit and district aforesaid, and within the jurisdiction of this court, to wit, at Purdy, in said county, was a person instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting a certain claim of Lenora E. McCall and Thomas J. McCall, minors, against the United States for pension, and did afterwards, on, 10 to wit, the thirtieth day of December, A. D. 1882, at said Purdy, wrongfully withhold from the said Thomas J. McCall a certain part of his said claim allowed by the United States and then and there due him, the said Thomas J. McCall, as such claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

2. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that said Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the 26th day of April, A. D. 1882, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the claim of said Lenora E. McCall and Thomas J. McCall, of said county, minors, against the United States for pension, and did afterwards, at said Purdy, on, to wit, the 30th day of December, A. D. 1882, wrongfully withhold from the said Thomas J. McCall a certain part of the pension allowed by the United States on said claim to the said Thomas J. McCall, and then and there due him, the said Thomas J. McCall, as such pensioner—that is to say, one

thousand dollars thereof—contrary to the form of the statute in such
case made and provided and against the peace and dignity
11 of the United States.

3. And the grand jurors of the United States within and for the said division, western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the western district of Tennessee, in said circuit, upon their oaths present that Lenora E. McCall aforesaid and the said Thomas J. McCall, minors, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee, and in the circuit and district aforesaid, and within the jurisdiction of this court, had a claim against the United States for pension, and that said Robert M. Thompson was then and there instrumental, within the intent and meaning of section 5485 of the Revised Statutes, in prosecuting their said claim; that afterwards, on, to wit, the 26th day of April, 1872, there was allowed by the United States on said claim the sum of, to wit, two thousand dollars pension money, and that afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, the said Robert M. Thompson did unlawfully and wrongfully withhold from the said Thomas J. McCall a certain large part of said claim and pension money so allowed by the United States and then and there due to the said Thomas J. McCall as such pensioner and claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

4. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said
12 sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that said Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, was appointed guardian of Lenora E. McCall and Thomas J. McCall aforesaid by the county court of said county; that the said Lenora E. McCall and Thomas J. McCall were then and there claimants against the United States for pension; that the said Robert M. Thompson then and there upon his appointment as such guardian became and was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the said claim of the said Lenora E. McCall and Thomas J. McCall against the United States for pension, and thereafter as such guardian received and collected from the United States, to wit, at said Purdy, on said claim large sums of money, to wit, one thousand dollars pension money, for the said Thomas J. McCall, which said money afterwards, on, to wit, the

30th day of December, A. D. 1882, at said Purdy, became and was due to the said Thomas J. McCall as such pensioner as aforesaid, and that said Robert M. Thompson then and there wrongfully withheld from the said Thomas J. McCall a large part of the said pension money so received and collected by him, the said Robert M. Thompson, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and
13 against the peace and dignity of the United States.

5. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths present that said Lenora E. McCall and the said Thomas J. McCall, minors, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, had a claim against the United States for pension; that afterwards the said Robert M. Thompson was then and there appointed guardian of said minors by the county court of said county; that the said Robert M. Thompson thereafter and upon his appointment as such guardian then and there became and was instrumental in prosecuting the said claim of the said minors for pension within the intent and meaning of section 5485 of the Revised Statutes of the United States, and that afterwards, at said Purdy, in his capacity of guardian, as aforesaid, the said Robert M. Thompson between the 25th day of April, A. D. 1872, and the 25th day of September, A. D. 1877, did collect and receive from the United States on said claim certain large sums of money for the said Thomas J. McCall, to wit, one thousand dollars pension money, which said money afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, became and was due to the said Thomas J. McCall as such pensioner, and that said Robert M. Thompson then and there
14 wrongfully withheld the same from the said Thomas J. McCall, to wit, said one thousand dollars, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

W. F. POSTON,
U. S. Dist. Att'y for West. Dist. Tenn.

(Endorsed.)

District Court of the United States, Western District of Tennessee,
Eastern Division.

THE UNITED STATES }
vs. } No. 226.
ROBERT M. THOMPSON. }

Indictment for withholding pension money, violation of section
5485 of United States Revised Statutes.

Witnesses:

THOMAS J. McCALL.
WM. & MARY C. WHILBY.
JOHN W. STUMPH.

Sworn to give evidence before the grand jury on this indictment.
This first day of May, A. D. 1885.

THOMAS HARRELL,
Foreman of the Grand Jury.

A true bill.

THOMAS HARRELL,
Foreman of the Grand Jury.

Returned into open court by the grand jury, and filed this 1st
day of May, A. D. 1885.

H. E. ANDREWS, *Clerk.*
— — —, *D. C.*

15

UNITED STATES OF AMERICA, }
Eastern Division of the Western District of Tennessee. }

At Jackson, in the district court of the United States within and
for the said eastern division of the western district of Tennessee, in
the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof began
and held for its April term, A. D. 1885, at the United States court-
house, in the city of Jackson, in said district, on, to wit, the first
day of May, A. D. 1885, in the following cause, to wit:

THE UNITED STATES, Plaintiff, }
vs. } No. 226.
ROBERT M. THOMPSON, Defendant. }

This day came the district attorney and announced to the court
that the grand jury were waiting to report; whereupon came the
grand jury in a body into open court and presented to the court the
following indictments, each endorsed "A true bill," and signed by
the foreman of the grand jury, viz: * * * No. 226. The
United States vs. Robert M. Thompson, indictment for violating the
laws by withholding pension money, * * * and the clerk is
hereby directed to properly file and docket the said indictment ac-

according to the practice of the court, and on motion of the district attorney it was ordered that the usual writs of *capias* issue in the foregoing cases, returnable to the next term of the court, and that said cases be, and they are hereby, continued.

Whereupon the following *capias* issued:

The President of the United States to the marshal of the western district of Tennessee, Greeting:

16 You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1885, then and there to answer the United States on a bill of indictment against him for violation of the laws of the United States by wrongfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district court of the United States, and the seal of said court, the first day of May, A. D. 1885, and 109th year of American Independence.

[L. s.]

H. E. ANDREWS, *Clerk*.

Marshal's Return.

This writ come to hand on the date of its issuance and is hereby returned executed. The said defendant gave bond at Jackson, Tennessee, before Commissioner H. E. Andrews, on the first day of May, A. D. 1885.

M. T. WILLIAMSON,
U. S. Marshal.

Returned and filed in court on the day and date last aforesaid at Jackson, Tennessee.

H. E. ANDREWS, *Clerk*.

17 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1885, at the United States court-house, in the city of Jackson, in said district, on, to wit, the first day of May, A. D. 1885, in the following cause, to wit:

THE UNITED STATES, Plaintiff, }
vs. } No. 226.
ROBERT M. THOMPSON, Defendant. }

Came the district attorney on behalf of the United States, and the said defendant in his own proper person, accompanied by his attor-

ney, when the said defendant, being duly arraigned at the bar of this court in this behalf, for plea says he is not guilty in manner and form as herein charged against him; whereupon, on motion of the district attorney, it is ordered that a jury do come, and thereupon came a jury of good and lawful men, to wit, J. C. Latiner, J. T. Tansil, B. A. Ramsey, D. L. Kimbrough, W. A. Steele, A. C. White, W. T. Pasham, J. J. Fuqua, J. D. Dodson, J. M. Henderson, J. C. Bybos, and J. M. Woolard, who, being duly elected, empaneled, tried, and sworn well and truly to try the issue herein joined, and of the said defendant a good deliverance make and a true verdict render according to the law and the evidence,
 18 upon their oaths do say they find the said defendant guilty in manner and form as in the indictment herein alleged against him, and on motion, and for satisfactory reasons to the court appearing, it is ordered that this case be continued for judgment and sentence to the next term.

UNITED STATES OF AMERICA, }
Western District of Tennessee. }

Know all men by these presents that we, Robert M. Thompson, as principal, and William J. Smith and Dew M. Wisdom, as sureties, acknowledge ourselves to owe and be indebted unto the United States in the sum of thirty (\$3000.00) hundred dollars, to be levied of our proper goods and chattels, lands and tenements, to the use of the United States but to be void if the said principal do well and truly make his personal appearance before the district court of the United States for the eastern division of the western district of Tennessee, at the Federal court-room, in the city of Jackson, on the fourth Monday in October next, A. D. 1885, that being the first day of the regular October term thereof, then and there to answer the United States on a charge against him for violation of the laws of the United States by unlawfully and wrongfully withholding pension money from a certain pensioner, and then and there to receive the judgment and sentence of the court in the case in which this bond is entitled in the said court and continue in attendance at said term of said court from day to day until discharged and abide the decision of the said court in the premises.

19 Witness our hands and seals this first day of May, A. D. 1885.

ROBERT M. THOMPSON. [SEAL.]
 DEW M. WISDOM. [SEAL.]
 W. J. SMITH. [SEAL.]

Signed, sealed, and acknowledged before me, at Jackson, Tennessee, and approved by me, this first day of May, A. D. 1885.

H. E. ANDREWS,
*Commissioner of the Circuit Courts
 of the United States for said District.*

(Endorsed.)

U. S. District Court, Eastern Division of Western Dist. Tenn.

THE UNITED STATES	} No. 226.
<i>vs.</i>	
ROBERT M. THOMPSON.	

Appearance bond, October term A. D. 1885.

Dated at Jackson, Tenn., May 1, A. D. 1888.

Filed at Jackson, Tenn., May 1, A. D. 1888.

H. E. ANDREWS, *Clerk*,
By D. H. HAYNES, *D. C.*

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UNITED STATES OF AMERICA,	}
<i>Western District of Tennessee, Eastern Division.</i>	

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1885, at the United States court-house, in the city of Jackson, in said district, on, to wit, the seventh day of November, A. D. 1885, in the following cause, to wit:

* * * * * * *

THE UNITED STATES	} No. 226.
<i>vs.</i>	
ROBERT M. THOMPSON.	

* * * * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,	}
<i>Western District of Tennessee, Eastern Division.</i>	

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at

21 the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1886, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension money from pensioner, and to receive sentence forthwith in said case.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and [SEAL.] the seal of said court, the 7th day of November, A. D. 1885, and 110th year of American Independence.

H. E. ANDREWS, *Clerk*,
By D. H. HAYNES, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 16th day of April, A. D. 1886.

JOS. H. FREEMAN,
U. S. Marshal,
By CHAS. TALLIAFERRO.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

H. E. ANDREWS, *Clerk*,
By D. H. HAYNES, *D. C.*

22

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1886, at the United States court-house, in the city of Jackson, in said district, on, to wit, the fifth day of May, A. D. 1886, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROBERT M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

23 You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1886, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and [SEAL.] the seal of said court, the 6th day of May, A. D. 1886, and 110th year of American Independence.

H. E. ANDREWS, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 16th day of November, A. D. 1886.

T. B. YANCEY, *U. S. Marshal,*
 By CHAS. S. TALLIAFERRO, *Deputy.*

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk.*

24 UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1886, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 17th day of November, A. D. 1886, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

* * * * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias *capias* issue therein, returnable to that term at its first day.

Whereupon the following *capias* writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the

25 United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1887, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully and wrongfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 18 day of November, A. D. 1886, and 111th year of American Independence.

JOHN B. CLOUGH, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee, Eastern Division.

This writ of alias *capias* came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 27 day of April, A. D. 1887.

T. B. YANCEY,

U. S. Marshal,

By J. F. McDOUGALL, *Deputy.*

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk.*

26

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1887, at the United States court-house, in the city of Jackson, in said district, on, to wit, the sixth day of May, A. D. 1887, in the following cause, to wit:

* * * * *

THE UNITED STATES
vs.
 ROBERT M. THOMPSON. } No. 226.

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the adjourned term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

27 You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the sixth day in July, A. D. 1887, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
 [SEAL.] and the seal of said court, the 6th day of May, A. D. 1887,
 and 111th year of American Independence.

JOHN B. CLOUGH, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 9th day of July, A. D. 1887.

T. B. YANCEY, *U. S. Marshal*,
By J. F. McDOUGALL, *Deputy*.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*.

28 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1887, at the United States court-house, in the city of Jackson, in said district, on, to wit, the ninth day of July, A. D. 1887, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROBERT M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1887, then and there to answer the United

States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 9th day of July, A. D. 1887, and 112th year of American Independence.

JOHN B. CLOUGH, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 10th day of October, A. D. 1887.

T. B. YANCEY,
U. S. Marshal.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk.*

30

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1887, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the 28th day of October, A. D. 1887, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROBERT M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1888, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully and wrongfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and the seal of said court, the 28 day of October, A. D. 1887, and 112th [SEAL.] year of American Independence.

JOHN B. CLOUGH, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 23 day of April, A. D. 1888.

T. B. YANCEY,
U. S. Marshal.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk.*

32 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1888, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 24th day of April, A. D. 1888, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

* * * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias *capias* issue therein, returnable to that term at its first day.

Whereupon the following *capias* writ issued :

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting :

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States
 33 at a term of said court to be held for the district aforesaid,
 at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1888, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully and wrongfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. Eli S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 24th day of April, A. D. 1888, and 11-th year of American Independence.

JOHN B. CLOUGH, *Clerk.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of *alias capias* came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This — day of —, A. D. 188—.

— — —.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

— — —.

34 THE UNITED STATES OF AMERICA, }
 Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the district courts of the United States for said western district of Tennessee, do hereby certify that the

papers hereto attached are a full, true, perfect, and correct copy of the originals and of the entire record and proceedings at Jackson, Tennessee, in the eastern division of said district, in said court, as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office, in the city of Jackson, Tennessee, this 23rd day of May, A. D. 1888, and of the Independence of the United States the 112th year.

JOHN B. CLOUGH, *Clerk.*

35

EXHIBIT C.

Western div.; G. J. B., ex'r; minors' ct. No. 155,518; Thomas J. McCall; Co. "I," 11th Reg't Ill. Vol. Cav'y.

DEPARTMENT OF THE INTERIOR,
 BUREAU OF PENSIONS,
 WASHINGTON, D. C., *March 25th, 1890.*

SIR: In response to your inquiry in the above-cited case, I have to state that the claim for pension in favor of said minors, Lenora E. McCall and Thomas J. McCall, of McNairy county, State of Tennessee, was filed in this bureau June 19th, 1866, by James F. McKinney, guardian, of Purdy, McNairy county, Tennessee, and was allowed in his favor as such guardian January 18, 1872, and the pension certificate No. 155,518 was forwarded to the pension agent at Nashville, Tenn., January 19th, 1872. A. Hart, Washington, D. C., filed power of attorney in the case April 8th, 1871, signed by James McKinney, guardian, and was recognized and allowed the fee. There is no evidence in the case showing that Robert M. Thompson, Purdy, Tenn., was instrumental in any way in the prosecution or settlement of this claim.

Respectfully,

GREEN M. RAUM,
Commissioner.

R. M. Thompson, Washington, D. C., #223 East Capitol St.

DEPARTMENT OF THE INTERIOR,
 WASHINGTON, D. C., *March 26th, 1890.*

Be it remembered that Green B. Raum, who has signed the annexed letter, was, at the date of signing thereof, Commissioner
 36 of Pensions, and that to his attestations as such full faith and credit are and ought to be given.

In testimony whereof I have hereunto subscribed my name and

caused the seal of the Department of the Interior to be affixed the day and year first above written.

JOHN W. NOBLE,
Secretary of the Interior.

[Seal of the Department of Interior.]

EXHIBIT D.

AUTHENTICATION OF RECORD.

Clerk's Certificate.

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the *writing* ten pages, numbered from one to ten, annexed to this certificate is a true copy of original on file and of record in said office, and that said original constitute the charges against defendant in the record of the proceedings of said court in the cause United States *vs.* Robert M. Thompson, No. 17128, criminal docket No. 17 of said court.

Witness my hand and the seal of said court this 4th day of April, 1890.

[Seal of Court.]

R. J. MEIGS, *Clerk*,
By ————,
Assistant Cl'k.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 4th day of April, 1890.

E. F. BINGHAM,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 4th day of April, 1890.

[Seal of Court.]

R. J. MEIGS, *Clerk*,
By ————,
Assistant Clerk.

38

Clerk's Certificate.

Filed May 5, 1888. R. J. Meigs, Clerk.

THE UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, Western District of Tennessee. }

I, as clerk of the district courts of the United States for said western district of Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of the original indictment now pending and undetermined at Jackson, Tennessee, in said court, as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office in the city of Jackson, Tennessee, this 12th day of December, A. D. 1887, and of the Independence of the United States the 112th year.

JOHN B. CLOUGH, *Clerk.*
 — — —, *D. C.*

39

Indictment.

UNITED STATES OF AMERICA, }
 Western District of Tennessee. }

In the District Court of the United States within and for the Eastern Division of said District, in the Sixth Judicial Circuit of the United States, April Term, A. D. 1885.

The grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths present that Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the 24th day of September, A. D. 1877, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully was a person instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting a certain claim of Lenora E. McCall and Thomas J. McCall, *miners*, against the United States for pension, and did
 sic
 afterwards, on, to wit, the 30th day of December, A. D. 1882,

at said Purdy, wrongfully withhold from the said Thomas J. McCall a certain part of his said claim allowed by the United States and then and there due him, the said Thomas J. McCall, as such claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against
40 *the the* peace and dignity of the United States.

2. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that said Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the 26th day of April, A. D. 1882, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the claim of said Lenora E. McCall and Thomas J. McCall, of said county, *miners*, against the United States for pension, and did afterwards, at said Purdy, on, to wit, the 30th day of December, A. D. 1882, wrongfully withhold from the said Thomas J. McCall a certain part of the pension allowed by the United States on said claim to the said Thomas J. McCall and then and there due him, the said Thomas J. McCall, as such pensioner—that is to say, one thousand dollars thereof—contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

3. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in
41 said circuit, upon their oaths further present that said Lenora E. McCall and the said Thomas J. McCall, miners, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully did have a claim against the United States for pension, and that said Robert M. Thompson was then and there instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting their said claim; that afterward, on, to wit, the 26th day of April, A. D. 1872, there was allowed by the United States on said claim the sum of, to wit, two thousand dollars pension money, and that afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, the said Robert M. Thompson did unlawfully and wrongfully withhold from the said Thomas J. McCall a certain large part of said claim and pension money so allowed by the United States and then and there

due to the said Thomas J. McCall as such pensioner and claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

4. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said

42 circuit, upon their oaths further present that said Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully was appointed guardian of Lenora E. McCall and Thomas J. McCall aforesaid by the county court of said county; that the said Lenora E. McCall and Thomas J. McCall were then and there claimants against the United States for pension; that the said Robert M. Thompson then and there, upon his appointment as such guardian, become and was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the said claims of the said Lenora E. McCall and Thomas J. McCall against the United States for pension, and thereafter as such guardian received and collected from the United States, to wit, at said Purdy, on said claim, large sums of money, to wit, one thousand dollars pension money, for the said Thomas J. McCall, which said pension money afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, become and was due to the said Thomas J. McCall, as such pensioner, as aforesaid, and that said Robert M. Thompson then and there wrongfully withheld from the said Thomas J. McCall a large part of the said pension money so received and collected by him, the said Robert M. Thompson, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

5. And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, 43 in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that said Lenora E. McCall and the said Thomas J. McCall, minors, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully did have a claim against the United States for pension; that afterwards the said Robert M. Thompson was appointed guardian of said minors by the county court of said county; that the said

Robert M. Thompson thereafter and upon his appointment as such guardian then and there become and was instrumental in prosecuting the said claim of the said minors for pension (within the intent and meaning of section 5485 of the Revised Statutes of the United States), and that afterwards, at said Purdy, in his capacity of guardian as aforesaid, the said Robert M. Thompson, between the 25th day of April, A. D. 1872, and the 25th day of April, A. D. 1877, did collect and receive from the United States on said claim certain large sums of money for the said Thomas J. McCall, to wit, one thousand dollars pension money, which said pension money afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, became and was due to the said Thomas J. McCall as such pensioner, and that said Robert M. Thompson then and there wrongfully withheld the same from the said Thomas J. McCall, to
 44 wit, said \$1,000, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

W. F. POSTON,
U. S. District Attorney for Western District of Tennessee.

Endorsement.

No. 17128, Criminal Doc. 17.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

Indictment for withholding pension money, violation of sections
 5485 of United States Revised Statutes.

Witnesses:

THOMAS J. McCALL.
 WM. & M. C. WHITLY.
 JOHN W. STUMPH.

Sworn to give evidence before the grand jury on this indictment.
 This first day of May, A. D. 1885.

THOMAS HARRELL,
Foreman of the Grand Jury.

A true bill.

THOMAS HARRELL,
Foreman of the Grand Jury.

[Endorsed:] *In forma pauperis*. No. 303. *In re* Robert M. Thompson. Writ of *habeas corpus*. Issued May 27, 1901; returned —, 18—. May 27, 1901. Service accepted. Aulick Palmer, U. S. marshal, by W. B. Robison, deputy marshal. Filed in open court May 27, 1901. J. R. Young, clerk.

47

Return of Respondent.

Filed May 31, 1901.

In the Supreme Court of the District of Columbia.

In the Matter of ROBERT M. THOMPSON.

Now comes Aulick Palmer, United States marshal in and for the District of Columbia, and for a return to the writ of *habeas corpus* heretofore, on the 27th day of May, 1901, in the above-entitled cause issued, produces the body of the above-named Robert M. Thompson in accordance with the aforesaid writ here in court, and for cause of his taking and detention says that he was taken and is detained under and by virtue of a certain *capias* issued to him as marshal, aforesaid, by the Honorable Eli Shelby Hammand, judge of the district court of the United States for the western district of Tennessee, issued on the 22nd day of April, 1901, which is hereto filed and prayed to be read as a part of this return, together with the proceedings in said court upon which said *capias* was issued, duly certified according to law.

And, having thus fully made return to said writ, respondent prays that the said petition for said writ may be dismissed and the said petitioner remanded to the custody of the respondent.

AULICK PALMER,

United States Marshal in and for the District of Columbia.

ASHLEY M. GOULD,

Attorney for Respondent.(Endorsed:) No. 303. *Habeas corpus*.

48

Order Continuing Hearing, &c.

Filed May 31, 1901.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus*.

Upon motion, it is this 31st day of May, 1901, ordered that the hearing herein be continued to and inclusive of the 7th day of June, 1901, and that petitioner be remanded to the custody of the marshal.

HARRY M. CLABAUGH, *Justice*.

[Endorsed:] *In forma pauperis*. No. 303. *In re* Robert M. Thompson. Writ of *habeas corpus*. Issued May 27, 1901; returned —, 18—. May 27, 1901. Service accepted. Aulick Palmer, U. S. marshal, by W. B. Robison, deputy marshal. Filed in open court May 27, 1901. J. R. Young, clerk.

47

Return of Respondent.

Filed May 31, 1901.

In the Supreme Court of the District of Columbia.

In the Matter of ROBERT M. THOMPSON.

Now comes Aulick Palmer, United States marshal in and for the District of Columbia, and for a return to the writ of *habeas corpus* heretofore, on the 27th day of May, 1901, in the above-entitled cause issued, produces the body of the above-named Robert M. Thompson in accordance with the aforesaid writ here in court, and for cause of his taking and detention says that he was taken and is detained under and by virtue of a certain *capias* issued to him as marshal, aforesaid, by the Honorable Eli Shelby Hammand, judge of the district court of the United States for the western district of Tennessee, issued on the 22nd day of April, 1901, which is hereto filed and prayed to be read as a part of this return, together with the proceedings in said court upon which said *capias* was issued, duly certified according to law.

And, having thus fully made return to said writ, respondent prays that the said petition for said writ may be dismissed and the said petitioner remanded to the custody of the respondent.

AULICK PALMER,

United States Marshal in and for the District of Columbia.

ASHLEY M. GOULD,

Attorney for Respondent.(Endorsed:) No. 303. *Habeas corpus*.

48

Order Continuing Hearing, &c.

Filed May 31, 1901.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus*.

Upon motion, it is this 31st day of May, 1901, ordered that the hearing herein be continued to and inclusive of the 7th day of June, 1901, and that petitioner be remanded to the custody of the marshal.

HARRY M. CLABAUGH, *Justice*.

Order Continuing Hearing, &c.

Filed Jun- 14, 1901.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus.*

It is ordered, upon motion, this 14th day of June, 1901, that the hearing herein be continued, and that petitioner be remanded to the custody of the marshal until further order of the court.

HARRY M. CLABAUGH, *Justice.*

49

Docket Entries.

Supreme Court of the District of Columbia.

UNITED STATES	} 17128.
<i>vs.</i>	
ROBERT M. THOMPSON.	

1888, May 5. From U. S. Commissioner Bundy.

" " " Copy of indictment charging violation, sec. 5485, R. S. U. S.

Warrant & return & transcript of proceedings for removal to western district of Tennessee, to answer said indictment, filed.

" " 4. Def't committed to jail by commissioner in default, \$2,000.

" June 5. Def't discharged from custody. (See # 17139, *habeas corpus.*)

50

Supreme Court of the District of Columbia.

TUESDAY, June 5th, 1888.

The court resumes its session pursuant to adjournment, Mr. Justice Montgomery presiding.

* * * * *

UNITED STATES	} No. 17128. Proceedings for Removal to Western District of Tennessee.
<i>vs.</i>	
ROBERT M. THOMPSON.	

It is ordered that the defendant be discharged from custody, after a full hearing upon a writ of *habeas corpus* (No. 17139), it being adjudged that the defendant is illegally restrained of his liberty.

51

Petition for Writ of Habeas Corpus.

Filed May 10, 1888.

In the Supreme Court of the District of Columbia.

This petitioner, Robert M. Thompson, a resident of the District of Columbia, complains to the court that he is unjustly and unlawfully detained and imprisoned by John S. Crocker in the jail in the District of Columbia without any warrant or commitment known to or authorized by law, as he believes, and in fact without any commitment at all, as he is informed and believes, and therefore he cannot present copies of the papers under which he is detained.

Your petitioner is a citizen of the United States, and was such at the time of the grievance herein complained of.

Your petitioner says that his imprisonment, detention, confinement, and restraint are illegal, and consists in this, as he understands and believes: that he is detained in said jail on what is alleged to be a subsisting indictment against him found and presented in the Federal court of the district of Tennessee on the first of May, 1885, which indictment is no longer in force or effect against the accused, and which indictment is and was void at the time it was signed by the grand jury of said district of Tennessee for the reason that the alleged offence charged in said indictment to have been committed by your petitioner was barred by the statute of limitations, and said indictment was not found within three years next after such alleged offence was committed, and the grand jury that found said indictment had no jurisdiction over said alleged
52 offence at the time of finding said indictment, and the said court of the United States for the — district of Tennessee had no jurisdiction to receive said indictment from said grand jury when the same was returned into the said court for the reason that said alleged offence in said indictment described was then and there by law condoned and extinguished.

And for the further reason that section 5485 of the Revised Statutes, under which said indictment purports to have been and was found, had been theretofore repealed, and because said section 5485 did not give jurisdiction to said grand jury and said Federal court to present, receive, find, or entertain such indictment, and that said indictment is void under said section, and for the reason that there is no law of the United States upholding said indictment, and the same is void.

Your petitioner, on making inquiry concerning the cause of said imprisonment and detention in said jail as aforesaid, learned that the only paper in the possession of the United States authorities claiming to detain said petitioner was and is a certified copy of said indictment; that after said indictment was found the accused was arraigned thereon, and such proceedings were then and there had in said court as that your petitioner was then and there discharged

from said indictment and the alleged accusation and offence therein contained, and by consent of the prosecuting officer of the United States and the judge of said court then having control of said prosecution your petitioner was allowed to leave the said jurisdiction and did leave said State of Tennessee and came to the District of Columbia with the full knowledge and consent of the said court and the prosecuting officer thereof.

53 Wherefore he says that said indictment is void from the beginning, and further that he has been relieved and discharged therefrom by consent of the proper authorities, to wit, the judge of said court and the prosecuting officer thereof, and that he is lawfully in the District of Columbia, and his arrest and imprisonment is wrongful and without legal effect or justification, and he prays to be discharged therefrom; that said pretended accusation against him, which in law is void, is made and used by certain parties having claims against him as creditors to justify his imprisonment and detention, as aforesaid, for the purpose of collecting a private debt of said petitioner and not to execute and enforce the criminal laws of the United States against your petitioner, and said indictment and his illegal arrest and detention thereunder is being wrongfully used to kidnap and carry away your petitioner to the State of Tennessee for the purpose of there wrongfully imprisoning petitioner until he shall satisfy said private claims, over which the criminal courts of the country have no jurisdiction whatever.

He therefore prays that a writ of *habeas corpus* may be granted directed to the said John S. Crocker, of the said District of Columbia, commanding him to have the body of petitioner before your honorable court, at a time and place therein to be specified, to do and receive what shall then and there be considered by this honorable court concerning him, together with the time and cause of his detention on said writ, and that petitioner may be restored to his liberty.

54 CITY OF WASHINGTON, {
District of Columbia, } ss :

Robert M. Thompson, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and that the statements therein made he believes to be true.

ROBERT M. THOMPSON.

Subscribed and sworn to before me this 12th day of May, 1888.

R. J. MEIGS, *Clerk*,

By W. E. WILLIAMS, *Ass't Clerk*.

(Endorsed:)

Let the writ of *habeas corpus* issue as prayed, returnable before me on Saturday, May 12th, 1888, at 11 o'clock a. m.

M. V. MONTGOMERY, *Justice*.

55 *Opinion of Court Ordering the Discharge of Petitioner.*

Filed Jun- 5, 1888.

In re ROB'T M. THOMPSON.

May 10th last the writ of *habeas corpus* issued on petition of Mr. Thompson, addressed to Warden Crocker, and returnable two days later.

From the return as amended it appears that on the first day of May, 1885, Thompson was indicted by the grand jury of the western district of Tennessee on a charge of violating the United States pension laws; that on the same day he was apprehended, arraigned, tried, and convicted; that immediately on such conviction an order was made by the court and entered in connection with the record of the verdict as follows: "It is therefore considered by the court that, upon motion and for satisfactory reasons to the court appearing, this case be continued for judgment & sentence to the next term of this court." On the making of this order & at the same date the defendant entered into a bond in the sum of \$3,000, conditioned for his appearance at the next term "to receive the judgment and sentence of the court." It is apparent from the record that the def't *did not* thereafter appear, but that during such next term and at each succeeding term the court made substantially the following order:

"On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the * * * case be * * * continued to the next term of the court," and upon such orders the usual writs of "alias capias" issued, returnable in the usual way.

56 The papers exhibited by the return show that on the 4th day of May last Mr. Thompson was apprehended on a warrant issued by U. S. Commissioner Bundy, taken before such commissioner and by him committed to jail, and upon such commitment the writ was sued out as first stated.

This warrant and commitment are supposed to be authorized by provisions of section 1014 of the Revised Statutes of the United States, and which statute provides in substance that United States commissioners may for any crime or offense against the United States arrest and imprison *or bail* the offender *for trial* before such court of the United States as by law has cognizance of the offense.

Counsel for Mr. Thompson urges three distinct propositions, either of which, if sustained, must result in the discharge of the defendant, and they are as follows:

1st. That the statute cited (see. 1014) was not intended to and did not refer to a case like the one under consideration, but applies solely to cases where *no trial* has been had.

2nd. That the Tennessee court, by its failure to sentence at the term during which the trial was had, lost jurisdiction of the case & of the def't, and

3rd. That the statute upon which each count of the indictment was framed (see. 5485 R. S. U. S.) had been in fact repealed before the alleged commission of the act which is asserted to be the *offense* complained of.

Now, as to the *first* position. Does the statute, see. 1014, authorize the proceedings which were had by and before the commissioner?

If *not*, of course, the commitment and incarceration were without authority and void. It is remembered that these proceedings are provided for in cases, and only in cases, where the defendant is to be bailed or committed "*for trial*."

A def't so apprehended has a right to demand that he be admitted to *bail* to appear at the court where he has been indicted for trial. Was such action legally possible *in this* case?

Could the def't, can he, be tried in the Tennessee court?

If he goes back there does he go back "*for trial*"?

What is a "*trial*"?

Blackstone declares it to be "the examination of the matters of *fact* in issue" (put in issue by the pleadings), 3 Black. Com., 330.

When a man is indicted for crime the indictment asserts the acts which he did, and that he is guilty.

He is arraigned and pleads not guilty. He denies the averments of the indictment.

That makes up the issue.

The trial is the examination of that question of fact.

The jury is sworn to well & truly try the cause.

When they return their verdict the issue is decided.

Blackstone again declares that, "When the jury have delivered their verdict and it is recorded in court they are discharged, and so *ends* the trial by jury." *Ib.*, 379.

He then adds, "Next follows the judgment." I cannot resist the conclusion that the trial in Tennessee has been had and ended, and that Commissioner Bundy had no right to admit to bail after verdict, and therefore no right to commit.

It follows that the defendant is, so far as appears by the return, unlawfully restrained of his liberty, and that he must be discharged.

Having reached this conclusion, it seems unnecessary to consider the other points, which were so pressed by def't's counsel, and I express no opinion upon them.

M. V. MONTGOMERY, *Justice.*

Dated June 4th, 1888.

I may add that I do not think it difficult to suggest the manner in which the def't, if wanted, might be apprehended for return, but whether there be or be not such a proceeding possible could hardly affect the solution of the question under consideration.

M. V. M.

Order Discharging Petitioner.

Filed Dec. 23, 1901.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus.*

This cause came on to be heard upon the petition for a writ of *habeas corpus*, the rule to show cause issued thereon, and the return of the respondent, Aulick Palmer, Esq., United States marshal in and for the District of Columbia; whereupon, after argument of the respective counsel and due consideration thereof by the court, said petitioner is ordered discharged from the custody of the said respondent this 23d day of December, A. D. 1901.

HARRY M. CLABAUGH, *Justice.*

From the foregoing the respondent, by his counsel, in open court, notes an appeal to the Court of Appeals.

Order Extending Time to Prepare Transcript.

Filed Jan. 30, 1902.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. No. 303. *Habeas Corpus.*

Ordered that the time within which to prepare a transcript of record herein on appeal be extended thirty days from this date.

HARRY M. CLABAUGH, *Justice.*

Jan'y 30th, 1902.

Directions to Clerk for Preparation of Transcript.

Filed Feb'y 7, 1902.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. *Habeas Corpus.* No. 303.

The clerk will please include in the record of appeal in this case the following papers and documents:

1. May 20, 1901. Petition and Exhibits A, B, C, D.
2. May 27, 1901. Writ of *habeas corpus* issued to Aulick Palmer, U. S. marshal, and return of service.
3. May 31, 1901. Return of respondent showing cause of detention.
4. " Order of court continuing hearing.

5. June 14, 1901. Order of court continuing hearing.
6. Docket entries in criminal No. 17128, doc. 17.
7. Discharge, Munites 20, p. 431.
8. Petition in 17139, criminal, doc. 17.
9. Opinion of court in criminal No. 17139, doc. 17, ordering discharge.
10. Certificates of clerk of proceedings in the Tennessee courts showing continuances of the case from term to term, and the issuance of writs of *capias* and papers attached to same, including final authentication.
11. Papers attached to certificate of Attorney General Knox.
12. Dec. 23, 1901. Order discharging petitioner from custody and appeal.
13. Jan. 30, 1902. Order extending time to file transcript.

ASHLEY M. GOULD,
U. S. Attorney for District of Columbia.

61

Stipulation.

Filed in open court Feb. 21, 1902.

In the Supreme Court of the District of Columbia.

In re ROBERT M. THOMPSON. *Habeas Corpus.* No. 303.

It is hereby stipulated and agreed between counsel for the petitioner and the United States that the certificates of the clerk as to proceedings had in the Tennessee courts, showing continuances of the case from term to term and the issuance of writs of *capias* and other papers attached to the same, including final authentication, and the papers attached to certificate of Attorney General Knox, which were referred to at the hearing in this court, both of which were in evidence and considered by the court, may be transmitted with the record to the Court of Appeals and have the same force and effect as if they had been filed and copied into the transcript.

ASHLEY M. GOULD,
U. S. Attorney for the District of Columbia,
Per GORDON.

GEORGE C. MEIGS,
Of Counsel for Petitioner.

Feb. 21, 1902.

62 UNITED STATES OF AMERICA, }
 District of Columbia, } ss :

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 61, inclusive, to be a true and correct transcript of the record, as

per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 303, *habeas corpus*, wherein Robert M. Thompson is petitioner and Aulick Palmer, United States marshal in and for the District of Columbia, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of February, A. D. 1902.

JOHN R. YOUNG, *Clerk*.

63

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1888, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 24 day of April, A. D. 1888, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1888, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of

[SEAL.] the United States for the western district of Tennessee, and the seal of said court, the 24 day of April, A. D. 1888, and 112th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 13 day of October, A. D. 1888.

THOS. B. YANCY,
U. S. Marshal,
By G. W. SHAW, *Deputy*.

Returned and filed in court on the 5th day of November, A. D. 1888, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

64

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1888, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 15th day of November, A. D. 1888, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROB'T M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Rob't M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1889, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 25 day of November, A. D. 1888, and 113th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 15th day of April, A. D. 1889.

THOS. B. YANCY,
U. S. Marshal,
 By G. W. SHAW, *Deputy*.

Returned and filed in court on the 23rd day of April, 1889, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

65 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1889, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 22 day of April, A. D. 1889, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1889, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
 [SEAL.] and the seal of said court, the 22 day of April, A. D. 1889, and 113th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 6th day of November, A. D. 1889.

J. W. BROWN,
U. S. Marshal,
 By ———, *Deputy.*

Returned and filed in court on the 6th day November, 1889, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1889, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 31st day of October, A. D. 1889, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1890, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
 [SEAL.] and the seal of said court, the 31 day of October, A. D. 1889, and 114th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 16 day of April, A. D. 1890.

J. W. BROWN,

U. S. Marshal,

By ———, Deputy.

Returned and filed in court on the 16 day April, 1890, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, Clerk,

By ———, D. C.

67 . UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1890, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the 28 day of April, A. D. 1890, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the

court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1890, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 28 day of April, A. D. 1890, and 114th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 20th day of October, A. D. 1890.

J. W. BROWN,
U. S. Marshal,
By S. J. GARDNER, *Deputy*.

Returned and filed in court on the 20 day October, 1890, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

68

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1890, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 27 day of October, A. D. 1890, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next

term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued :

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting :

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1891, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and the seal of said court, the 27 day of October, A. D. 1890, and 115th [SEAL.] year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 24 day of April, A. D. 1891.

J. W. BROWN,
U. S. Marshal,
 By ———, *Deputy.*

Returned and filed in court on the 24 day April, 1891, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

69 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun

and held for its April term, A. D. 1891, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 27 day of April, A. D. 1891, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1891, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 27 day of April, A. D. 1891, and 115th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 24 day of October, A. D. 1891.

J. W. BROWN,
 U. S. Marshal,
 By — — —, *Deputy*.

Returned and filed in court on the 24 day of October, 1891, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

70

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1891, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 27 day of October, A. D. 1891, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1892, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
[SEAL.] the seal of said court, the 27 day of October, A. D. 1891, and 116th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 8 day of December, A. D. 1891.

J. W. BROWN,
U. S. Marshal,
By CLEM LEA, Deputy.

Returned and filed in court on the 24 day of April, 1891, in
said court, at Jackson, Tennessee.
April 24, 1891.

JOHN B. CLOUGH, Clerk,
By ———, D. C.

71 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1892, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 25 day of April, A. D. 1892, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so

that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1892, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
[SEAL.] the seal of said court, the 25 day of April, A. D. 1892, and 116th year of American Independence.

JOHN B. CLOUGH, *Clerk*,

By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 26 day of October, A. D. 1892.

J. W. BROWN,

U. S. Marshal,

By ———, *Deputy*.

Returned and filed in court on the 26 day October, 1892, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,

By ———, *D. C.*

72

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1892, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 24 day of October, A. D. 1892, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the fore-

going criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1893, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
 [SEAL.] and the seal of said court, the 24 day of October, A. D. 1892, and 118th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 23 day of April, A. D. 1893.

J. A. MANSON,
U. S. Marshal,
 By — — —, *Deputy.*

Returned and filed in court on the 23 day April, 1893, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun

and held for its April term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 24 day of April, A. D. 1893, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1893, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 24 day of April, A. D. 1893, and 118th year of American Independence.

JOHN B. CLOUGH, *Clerk,*

By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 23 day of October, A. D. 1893.

J. A. MANSON,

U. S. Marshal,

By ———, *Deputy.*

Returned and filed in court on the 23 day of October, 1893, afore said in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

74

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1893, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 23 day of October, A. D. 1893, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1894, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
[SEAL.] and the seal of said court, the 23 day of October, A. D. 1893, and 118th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 23 day of April, A. D. 1894.

J. A. MANSON,
U. S. Marshal,
By ———, *Deputy.*

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
By ———, *D. C.*

75 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1894, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 23 day of April, A. D. 1894, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the

court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1894, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and the seal of said court, the 23 day of April, A. D. 1894, and 118th [SEAL.] year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 24 day of November, A. D. 1894.

J. A. MANSON,
U. S. Marshal,
By D. F. ELLIOTTE, *Deputy*.

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

76

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1894, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 23 day of October, A. D. 1894, in the following cause, to wit:

* * * * *

THE UNITED STATES	} No. 226.
<i>vs.</i>	
R. M. THOMPSON.	

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next

term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued :

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting :

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1895, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 23 day of October, A. D. 1894, and 119th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 29 day of April, A. D. 1895.

J. A. MANSON,
U. S. Marshal,
 By P. M. CROCKER, *Deputy.*

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

77 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1895, at the United States court-

house, in the city of Jackson, in said district, on, to wit, the 22 day of April, A. D. 1895, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1895, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 22 day of April, A. D. 1895, and 119th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 25 day of November, A. D. 1895.

J. A. MANSON,
U. S. Marshal,
 By ———, *Deputy.*

Returned and filed in court on the 25th day of November, 1895, in said court, at Jackson, Tennessee.

Filed Nov. 25, 1895.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

78

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1895, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 28 day of October, A. D. 1895, in the following cause, to wit:

*	*	*	*	*	*	*
THE UNITED STATES			}	No. 226.		
<i>vs.</i>						
R. M. THOMPSON.						
*	*	*	*	*	*	*

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1896, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
[SEAL.] the seal of said court, the 28 day of October, A. D. 1895, and 119th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 27 day of April, A. D. 18-6.

J. A. MANSON,

U. S. Marshal,

By ———, Deputy.

Returned and filed in court on the day last aforesaid in said court,
at Jackson, Tennessee.

JOHN B. CLOUGH, Clerk,

By ———, D. C.

79

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and
for the said eastern division of the western district of Tennessee, in
the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun
and held for its April term, A. D. 1896, at the United States court-
house, in the city of Jackson, in said district, on, to wit, the 27
day of April, A. D. 1896, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to
the court appearing, it is hereby ordered by the court that the fore-
going criminal cases be, and they are hereby, continued to the next
term of this court, and that the usual writs of alias capias issue
therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western
district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thomp-
son, if to be found in your district, and him safely keep, so
that you have him before the judge of the district court of the
United States at a term of said court to be held for the district afore-

said, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1896, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully withholding pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 2 day of April, A. D. 1896, and 121th year of American Independence.

JOHN B. CLOUGH, *Clerk,*

By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 26 day of October, A. D. 1896.

J. A. MANSON,

U. S. Marshal,

By — — —, *Deputy.*

Returned and filed in court on the day last aforesaid in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*

By — — —, *D. C.*

80

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1896, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 26 day of October, A. D. 1896, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the

next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1897, then and there to answer the United States on a bill of indictment against him for violation of the United States internal-revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 26 day of October, A. D. 1896, and 121th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 26 day of April, A. D. 1897.

J. A. MANSON,
U. S. Marshal,
 By — — —, *Deputy.*

Returned and filed in court on the day last aforesaid in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk,*
 By — — —, *D. C.*

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun

and held for its April term, A. D. 1897, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 26 day of April, A. D. 1897, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Rob't M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1897, then and there to answer the United States on a bill of indictment against him for violation of the United States internal revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee,
 [SEAL.] and the seal of said court, the 26 day of April, A. D. 1897, and 121th year of American Independence.

JOHN B. CLOUGH, *Clerk,*
 By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 22 day of October, A. D. 1897.

J. A. MANSON,
U. S. Marshal,
 By ———, *Deputy.*

Returned and filed in court on the day last aforesaid, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By J., D. C.

82

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1897, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 6 day of December, A. D. 190—, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROB'T M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Rob't M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1898, then and there to answer the United States on a bill of indictment against him for violation of the United States internal revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and the seal of said court, the 6 day of December, A. D. 1897, and 122th year of American Independence.

[SEAL.]

JOHN B. CLOUGH, *Clerk*,
By ———, D. C.

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 31 day of March, A. D. 1898.

J. A. MANSON,
U. S. Marshal,
By ———, Deputy.

Returned and filed in court on the day last aforesaid, in said court,
at Jackson, Tennessee.

JOHN B. CLOUGH, Clerk,
By ———, D. C.

83 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1898, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the 25 day of April, A. D. 1898, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the

court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1898, then and there to answer the United States on a bill of indictment against him for violation of the United States internal-revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and [SEAL.] the seal of said court, the 26 day of April, A. D. 1898, and 122th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 1st day of September, A. D. 1898.

T. H. BAKER,

U. S. Marshal,
By — — —, *Deputy*.

Returned and filed in court on the 24th day of October, A. D. 1898, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

84

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1898, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 6 day of December, A. D. 1898, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next

term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1899, then and there to answer the United States on a bill of indictment against him for violation of the United States internal-revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 6 day of December, A. D. 1898, and 123th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. —.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 2nd day of March, A. D. 1899.

T. H. BAKER,
U. S. Marshal,
 By T. H. BAKER, JR., *Deputy*.

Returned and filed in court on the day last aforesaid in said court at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

85

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and

held for its April term, A. D. 1899, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 24 day of April, A. D. 190—, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of R. M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1899, then and there to answer the United States on a bill of indictment against him for violation of the United States internal-revenue laws by unlawfully retailing liquor.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, and
 [SEAL.] the seal of said court, the 24 day of April, A. D. 1899, and 123th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By ———, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

This writ of alias capias came to hand on the date of its issuance and is now returned unexecuted, the said defendant not to be found in my district. This 23rd day of October, A. D. 1899.

T. H. BAKER,
 U. S. Marshal,
 By D. F. ELLIOTTE, *Deputy*.

Returned and filed in court on the day last aforesaid in said court,
at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

86

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and
for the said eastern division of the western district of Tennessee, in
the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and
held for its October term, A. D. 1899, at the United States court-
house, in the city of Jackson, in said district, on, to wit, the 23
day of October, A. D. 1899, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROB'T M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to
the court appearing, it is hereby ordered by the court that the fore-
going criminal cases be, and they are hereby, continued to the next
term of this court, and that the usual writs of alias capias issue
therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western
district of Tennessee, Greeting:

You are hereby commanded to take the body of Rob't M. Thomp-
son, if to be found in your district, and him safely keep, so
that you have him before the judge of the district court of the
United States at a term of said court to be held for the district afore-
said, at the court-house, in the city of Jackson, on the fourth Mon-
day in April, A. D. 1900, then and there to answer the United
States on a bill of indictment against him for violation of the United
States laws by unlawfully embezzling pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of
the United States for the western district of Tennessee,
[SEAL.] and the seal of said court, the 23 day of October, A. D.
1899, and 124th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 23 day of April, A. D. 1900.

T. H. BAKER,
U. S. Marshal,

By — — —, Deputy.

Returned and filed in court on the day last aforesaid in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, Clerk,

By — — —, D. C.

87 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1900, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 23 day of April A. D. 1900, in the following cause, to wit:

* * * * *

THE UNITED STATES }
vs. } No. 226.
ROB'T M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held

for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1900, then and there to answer the United States on a bill of indictment against him for violation of the United States laws by unlawfully embezzling pension.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 23 day of April, A. D. 1900, and 124th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
Eastern Division.

This writ of alias capias came to hand on the date of its issuance, and is now returned unexecuted, the said defendant not to be found in my district. This 22 day of October, A. D. 1900.

T. H. BAKER,
U. S. Marshal,
By — — —, *Deputy*.

Returned and filed in court on the day last aforesaid in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
By — — —, *D. C.*

88 In the District Court of the United States for the Eastern
Division of the Western District of Tennessee.

Entered on the 29th Day of October, A. D. 1900. J. B. Clough,
Clerk.

UNITED STATES
vs.
ROB'T M. THOMPSON. } 226.

In this cause it appearing to the court that at the April term, A. D. 1885, the defendant was duly and regularly tried before a jury of good and lawful men, and that he was found guilty in the manner and form as alleged in the indictment therein against him;

And it further appearing to the court that the said defendant was not sentenced at that term of the court, and that by an order duly entered the said cause was continued for judgment and sentence until the next term of this court:

And it further appearing to the court that the said Rob't M. Thompson, after the entry of the order above mentioned continuing

the said cause to the next term of court for judgment and sentence, entered into bond in this cause whereby he, the said Rob't M. Thompson, as principal, and Wm. J. Smith and Dew. M. Wisdom, as sureties, acknowledge themselves to be indebted to the United States in the sum of three thousand dollars (\$3,000), to be void if the said principal, Rob't M. Thompson, should well and truly make his personal appearance before this court at the Federal court room, in the city of Jackson, on the fourth Monday in October, 1885, that being the first day of the regular October term thereof, then and there to answer the United States on a charge against him of violation of the laws of the United States by unlawfully and wrongfully withholding money from a certain pensioner named Thomas J. McCall, and then and there to receive the judgment and sentence of the court in this case and continue in attendance at said term from day to day until discharged and abide the decision of the court in the premises, which said bond was signed by the said Rob't M. Thompson, as principal, and Dew. M. Wisdom and Wm. J. Smith, as sureties;

89 And it further appearing to the court that the said Rob't M. Thompson failed and refused to make his appearance at the next — of this court, to wit, the October term, 1885, following the entry of the said order, above referred to, continuing the said cause for judgment and sentence, as he had contracted to do in the said bond, and that forfeiture was taken on said bond at the said October term, 1885, and that subsequently such proceedings were had on said bond that judgment was rendered against the said Thompson, as principal, and said Smith and Wisdom, as sureties, for the full penalty thereof, and that execution was issued on said judgment and levied upon land belonging to the surety W. J. Smith, and that said land was sold and purchased by the United States, which is now the owner thereof; and it further appearing that ever since the said term of this court at which said Thompson was tried and convicted, as aforesaid, he, the said Rob't M. Thompson, has failed and refused to make his appearance before this court for judgment and sentence *and sentence* in this cause, and that capias and alias capias have been duly and regularly issued at each term of the court, beginning with the said October term, 1885, addressed to the marshal of this district, commanding him to arrest the said defendant; and it further appearing to the court that the marshal has been unable to find the said defendant, Rob't M. Thompson;

And it further appearing from the statement of the district attorney, in open court, that the said Rob't M. Thompson is now a resident of the District of Columbia and is not a resident of this district, and that the said Rob't M. Thompson is willfully absenting himself from this district so that the ordinary process cannot be executed upon him by the marshal of this district, and that the said Rob't M. Thompson is now a fugitive from justice:

It is therefore considered by the court that a capias be issued from this court, directed to the United States marshal for the District of Columbia, commanding him to take the body of said Rob't

M. Thompson, if to be found in his district, and him safely keep, so that he may have him before this court at a term of this court to be held for the eastern division of the western district of
 90 Tennessee, at the court-house, in the city of Jackson, on the fourth Monday in April, 1901, then and there to receive such sentence as the court may impose in this case under the conviction already had herein, as aforesaid.

In the event it is discovered that the said Rob't M. Thomps- is not to be found in the said District of Columbia, then it is ordered that a capias be issued addressed to the marshal of any other judicial district of the United States in which said Thompson may be found, commanding him to take the body of said Rob't M. Thompson, as aforesaid, and have him before this court at the April term, 1901, as aforesaid, for the purpose of receiving such sentence as the court may impose upon the conviction already had herein.

The clerk, in issuing the said capias as above directed, *wi* will attach thereto a certified copy of the verdict of the jury and a certified copy of the said order continuing this cause for *ju* judgment and sentence to the next term, a certified copy of the appearance bond so executed by him, as aforesaid, and a copy of this order for the purpose of showing the authority for the issuance of the said process.

91 UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1900, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 29 day of October, A. D. 1900, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 R. M. THOMPSON. }

* * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the usual writs of alias capias issue therein, returnable to that term at its first day.

Whereupon the following capias writ issued:

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

The President of the United States to the marshal of the District of Columbia, Greeting:

In pursuance of an order made by the *the* United States district court for the eastern division of the western district of Tennessee, at Jackson, in said district, in case of U. S. *vs.* R. M. Thompson, on the 29th day of October, 1900, a certified copy of which order is hereto attached and made a part of this *capias*, together with certified copies of the papers mentioned in the said order, which are also made a part of this *capias*, you are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in April, A. D. 1901, then and there to receive such sentence as the court may impose upon him under *the laws by unlawfully* the conviction already had herein against him.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district courts of the United States for the western district of Tennessee, [SEAL.] and the seal of said court, the 11th day of January, A. D. 1901, and 124th year of American Independence.

JOHN B. CLOUGH, *Clerk*,
 By — — —, *D. C.*

(Endorsement of marshal's return.)

No. 226.

District Court of the United States, Western District of Tennessee,
 Eastern Division.

WASHINGTON, D. C., *April* 17, 1901.

Arrested the within-named defendant February 2, 1901, and hold him in custody, not being able to remove him from this District because of his serious illness. Such removal at this time would be dangerous to the defendant's life, as certified to by his attending physician.

AULICK PALMER,
U. S. Marshal, District — Columbia,
 By — — —.

Returned and filed in court on the 22nd day of April, 1901, in said court, at Jackson, Tennessee.

JOHN B. CLOUGH, *Clerk*,
 By D. F. ELLIOTTE, *D. C.*

92

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee. }

In the District Court of the United States within and for the Eastern Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its April term, A. D. 1901, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 22 day of April, A. D. 1901, in the following cause, to wit:

THE UNITED STATES, Plaintiff, }
 vs. } No. 226.
 ROBERT M. THOMPSON, Defendant. }

In this cause, it appearing to the court that the capias heretofore issued in pursuance of the order entered herein at the last term of court, on the 29th day of October, A. D. 1900, in Minute Book 3, page 235, has been returned by the marshal of the District of Columbia unexecuted on account of the severe illness of the defendant, Robert M. Thompson, it is accordingly ordered, on the motion of the district attorney, that the said order above referred to, of date 29th day of October, A. D. 1900, appearing in Minute Book No. 3, page 235, be, and the same
 93 is hereby, in all things renewed, and an alias capias is now directed to be issued to the marshal of the District of Columbia, or the United States marshal of any other district in the United States in which the said defendant may be found, commanding him to take the body of the said Robert M. Thompson, if to be found in his district, and him safely keep, so that he have him before the judge of the district court of the United States, at a term of said court to be held for the said district, at the court-house, in the city of Jackson, on the fourth Monday in October next, A. D. 1901, and the clerk is directed to attach to the said capias certified copies of all papers as directed by the said former order, and also a copy of this order, for the purpose of showing the authority for the issuance of the said writ.

93½

UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial district thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1901, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 1st day of May, A. D. 1901, in the following cause, to wit:

* * * * *

THE UNITED STATES }
 vs. } No. 226.
 ROB'T M. THOMPSON. }

* * * * * *

On motion of the district attorney, and for satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing criminal cases be, and they are hereby, continued to the next term of this court, and that the writs of alias capias as heretofore directed issue therein, returnable to that term at its first day.

94 THE UNITED STATES OF AMERICA, }
 Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the district court of the United States, for the eastern division of said western district of Tennessee, do hereby certify that the papers hereto attached are a full, true, perfect, and correct copies of the original orders from April, 1888, to present time and marshal's returns in said court as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE UNITED STATES }
 vs. } No. 226.
 ROB'T M. THOMPSON. }

In testimony whereof I have hereunto written my name and affixed the seal of said court, at my office in the city of Jackson, Tennessee, this 14th day of June, A. D. 1901, and of the Independence of the United States the 124^d year.

{ Seal District Court of the United States, Western }
 District of Tennessee. }

JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
*Judge of the District Courts of the United
 States for the District Aforesaid.*

[Endorsed:] No. 226. Circuit court of the United States, western district of Tennessee. The United States vs. Rob't M. Thompson.

95

No. 2889.

UNITED STATES OF AMERICA,
DEPARTMENT OF JUSTICE, *May 6, 1901.*

I, Philander C. Knox, Attorney General of the United States, do hereby certify that E. S. Hammond, whose name is signed to the accompanying paper, is now, and was at the time of signing the same, United States district judge, western dist. of Tennessee, duly commissioned and qualified.

In witness whereof I have hereunto set my
Seal Department of Justice. hand and caused the seal of the Department of Justice to be affixed on the day and year first above written.

P. C. KNOX,
Attorney General.

[In pencil:] If for private purpose will have to have 10c. int. rev. stamp.

96

UNITED STATES OF AMERICA, }
Western District of Tennessee, Eastern Division Thereof. }

The President of the United States to the marshal of the District of Columbia, Greeting:

In pursuance of an order made by the United States district court for the eastern division of the western district of Tennessee, at Jackson, in said district, in the case of *The United States vs. Robert M. Thompson*, on the 22 day of April, 1901, renewing the order of date 29th October, 1900, and certified copies of both of which orders are hereto attached and made a part of this capias, together with certified copies of the orders and papers mentioned in both said orders, which are also made a part of this capias, you are hereby commanded to take the body of Robert M. Thompson, if to be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1901, then and there to receive such sentence as the court may impose upon him under the conviction already had herein against him.

Herein fail not and have you then and there this writ.

Witness the Honorable Eli Shelby Hammond, judge of the district court of the United States for the western district of Tennessee, and the seal of said court, this 22nd day of April, 1901, and the 124th year of American Independence.

{ Seal District Court of the United States, Western }
District of Tennessee.

JOHN B. CLOUGH, *Clerk.*
DAN. F. ELLIOTTE,
Deputy Clerk.

97 UNITED STATES OF AMERICA, }
Western District of Tennessee. }

In the District Court of the United States within and for the Eastern Division of said District, in the Sixth Judicial Circuit of the United States, April Term, A. D. 1885.

The grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths present that Robert M. Thompson, yeoman, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the 24th day of September, A. D. 1877, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully was a person instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting a certain claim of Lenora E. McCall and Thomas J. McCall, miners, against the United States for pension, and did afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, wrongfully withhold from the said Thomas J. McCall a certain part of his said claim allowed by the United States and then and there due him, the said Thomas J. McCall, as such claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

98 (2.) And the grand jurors aforesaid upon their oaths aforesaid do further present that on, to wit, the 26th day of April, A. D. 1882, at Purdy, in said county, the said Robert M. Thompson was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the claim of said Lenora E. McCall and Thomas J. McCall, of said county, miners, against the United States for pension, and did afterwards, at said Purdy, on, to wit, the 30th day of December, A. D. 1882, wrongfully withhold from the said Thomas J. McCall a certain part of the pension allowed by the United States on said claims to the said Thomas J. McCall and then and there due him, the said Thomas J. McCall, as such pensioner—that is to say, one thousand dollars thereof—contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

(3.) And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lenora E. McCall and the said Thomas J. McCall, of the county of McNairy and State of Tennessee and late of the circuit and district aforesaid,

on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully did have a claim against the United States for pension, and that said Robert M. Thompson was then and there instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting their said claim; that afterwards, on, to wit, the 26th day of April, A. D. 1872, there was allowed

99 by the United States on said claim the sum of, to wit, two thousand dollars pension money, and that afterwards, on,

to wit, the 30th day of December, A. D. 1882, at said Purdy, the said Robert M. Thompson did unlawfully and wrongfully withhold from the said Thomas J. McCall a certain large part of the said claim and pension money so allowed by the United States and then and there due to the said Thomas J. McCall as such pensioner and claimant, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(4.) And the grand jurors aforesaid upon their oaths aforesaid do further present that the said Robert M. Thompson, on, to wit, the fifth day of February, A. D. 1872, at Purdy, in said county of McNairy, was appointed guardian of Lenora E. McCall and Thomas J. McCall aforesaid by the county court of said county; that the said Lenora E. McCall and Thomas J. McCall were then and there claimants against the United States for pension; that the said Robert M. Thompson then and there upon his appointment as such guardian became and was instrumental, within the intent and meaning of section 5485 of the Revised Statutes of the United States, in prosecuting the said claim of the said Lenora E. McCall and Thos. J. McCall against the United States for pension, and thereafter as such guardian received and collected from the United States, to wit, at said Purdy, on said claim large sums of money, to wit, one thousand dollars pension money, for the said Thomas J. McCall, which said pension money afterwards, on, to wit, the 30th day of December, A. D. 1872, at said Purdy, became and was due to the said Thomas J. McCall as such pensioner as aforesaid, and that said Robert M. Thompson then and there wrong-

100 fully withheld from the said Thomas J. McCall a large part of the said pension money so rec'd and collected by by him, the said Robert M. Thompson, to wit, one thousand dollars thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

(5.) And the grand jurors of the United States within and for the eastern division of the western district of Tennessee, in said sixth judicial circuit, duly elected, empaneled, sworn, and charged to enquire within and for said division of the district aforesaid, in said circuit, upon their oaths further present that the said Lenora E. McCall and the said Thomas J. McCall, miners, of the county of McNairy

and State of Tennessee and late of the circuit and district aforesaid, on, to wit, the fifth day of February, A. D. 1872, in the county of McNairy aforesaid and State of Tennessee and in the circuit and the eastern division of the district aforesaid, to wit, at Purdy, in said county, and within the jurisdiction of this court, lawfully did have a claim against the United States for pension; that afterwards the said Robert M. Rhompson was then and there appointed guardian of said miners by the county court of said county; that the said Robert M. Thompson thereafter and upon his appointment as such guardian then and there became and was instrumental in prosecuting the said claim of the said minors for pension within the intent and meaning of section 5485 of the Revised Statutes of the United States, and that afterwards, at said Purdy, in his capacity of guardian, as aforesaid, the said Robert M. Thompson between the 25th day of April, A. D. 1872, and the 25th day of September, A. D. 1877, did collect and receive from the United States on said claim certain large sums of money for the said Thomas J. McCall, to wit, one thousand dollars pension money, which said pension money afterwards, on, to wit, the 30th day of December, A. D. 1882, at said Purdy, became and was due to the said Thomas J. McCall as such pensioner, and that said Robert M. Thompson then and there
 101 wrongfully withheld the same from the said Thomas J. McCall, to wit, said \$1,000.00, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

W. F. POSTON,
U. S. District Attorney for Western District of Tennessee.

(Endorsed.)

Witnesses:

THOMAS J. McCALL.
 WILLIAM WHILLY.
 MARY C. WHILTEY.
 JOHN W. STUMPH.

Sworn to give evidence before the grand jury on this indictment.
 This first day of May, A. D. 1885.

THOMAS HARRELL,
Foreman of the Grand Jury.

A true bill.

THOMAS HARRELL,
Foreman of the Grand Jury.

Returned into open court by the grand jury and filed this first day of May, A. D. 1885.

H. E. ANDREWS, *Clerk.*

102

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof began and held for its April term, A. D. 1885, at the United States court-house, in the city of Jackson, in said district, on, to wit, the first day of May, A. D. 1885, in the following cause, to wit:

THE UNITED STATES, Plaintiff, }
 vs. } No. 226.
 ROBERT M. THOMPSON, Defendant. }

This day came the district attorney and announced to the court that the grand jury were waiting to report; whereupon came the grand jury in a body into open court and presented to the court the following indictments, each endorsed "A true bill," and signed by the foreman of the grand jury, viz: * * * No. 226. The United States vs. Robert M. Thompson, indictment for violating the pension laws by withholding pension money, * * * and the clerk is hereby directed to properly file and docket the said indictment according to the practice of the court, and on motion of the district attorney it was ordered that the usual writs of *capias* issue in the foregoing cases, returnable to the next term of the court, and that said cases be, and they are hereby, continued.

Whereupon the following *capias* issued:

The President of the United States to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to take the body of Robert M. Thompson, if he be found in your district, and him safely keep, so that you have him before the judge of the district court of the United States at a term of said court to be held for the district aforesaid, at the court-house, in the city of Jackson, on the fourth Monday in October, A. D. 1885, then and there to answer the United States on a bill of indictment against him for violation of the pension laws of the United States by wrongfully withholding pension money.

Herein fail not and have you then and there this writ.

Witness the Hon. E. S. Hammond, judge of the district court of the United States, and the seal of said court, the first day of May, A. D. 1885, and 109th year of American Independence.

[L. s.]

H. E. ANDREWS, *Clerk.*

Marshal's Return.

This writ came to hand on the date of its issuance and is hereby returned executed, the said defendant having been arrested by me and given bond before Horace E. Andrews, a commissioner of the

court, at Jackson, Madison Co., Tennessee, on the first day of May,
A. D. 1885.

M. T. WILLIAMSON,
U. S. Marshal.

Returned and filed in court on the day and date last aforesaid at Jackson, Tennessee.

H. E. ANDREWS, *Clerk.*

104 UNITED STATES OF AMERICA,
Western District of Tennessee, Eastern Division.

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1885, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the first day of May, A. D. 1885, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
 ROBERT M. THOMPSON, Defendant. } No. 226.

Came the district attorney, on behalf of the United States, and the said defendant in his own proper person, accompanied by his attorney, when the said defendant, being duly arraigned at the bar of this court in this behalf, for plea says he is not guilty in manner and form as herein charged against him; whereupon, on motion of the district attorney, it is ordered that a jury do come, and thereupon came a jury of good and lawful men, to wit, J. C. Latimer, J. T. Tonsil, B. A. Ramsey, D. S. Kinsbrough, W. A. Steele, A. C. White, W. T. Pashom, J. J. Fuqua, J. D. Dodson, J. M. Henderson, J. C. Byles, and J. M. Moorland, who, being duly elected, empaneled, tried, and sworn well and truly to try the issue herein joined and of the said defendant a good deliverance make and a true verdict render according to the law and the evidence, upon their oaths do say they find the said defendant guilty in manner and form as in the indictment herein alleged against him. It is therefore considered by the court that upon motion, and for satisfactory reasons to the court appearing, this case be continued for judgment and sentence to the next term of this court.

105 UNITED STATES OF AMERICA, }
Western District of Tennessee. }

Know all men by these presents that we, Robert M. Thompson, as principal, and William J. Smith and Dew M. Wisdom, as sureties, acknowledge ourselves to owe and be indebted unto the United States in the sum of thirty (3000.00) hundred dollars, to be levied of our proper goods and chattels, lands and tenements, to the use of

the United States, but to be void if the said principal do well and truly make his personal appearance before the district court of the United States for the eastern division of the western district of Tennessee, at the Federal court room, in the city of Jackson, on the fourth Monday in October next, A. D. 1885, that being the first day of the regular October term thereof, then and there to answer the United States on a charge against him for violation of the laws of the United States by unlawfully and wrongfully withholding pension money from a certain pensioner, and then and there to receive the judgment and sentence of the court in the case in which this bond is entitled in the said court and continue in attendance at said term of said court from day to day until discharged and abide the decision of the said court in the premises.

Witness our hands and seals this first day of May, A. D. 1885.

ROBERT M. THOMPSON.	[SEAL.]
DEW M. WISDOM.	[SEAL.]
W. J. SMITH.	[SEAL.]

Signed, sealed, and acknowledged before me, at Jackson, Tennessee, and approved by me this first day of May, A. D. 1885.

H. E. ANDREWS,
*Commissioner of the Circuit Courts
of the United States for said District.*

106

UNITED STATES OF AMERICA, }
Eastern Division of the Western District of Tennessee. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1885, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 7th day of November, A. D. 1885, in the following cause, to wit:

THE UNITED STATES, Plaintiff,	} No. 351.
vs.	
R. M. THOMPSON ET AL., Defendant.	

It appearing to the court that on the first day of May, A. D. 1885, the said defendant, Robert M. Thompson, as principal, and Dew M. Wisdom and W. J. Smith, as sureties, acknowledged themselves to owe and be indebted to the United States in the sum of \$3,000.00 before H. E. Andrews, one of the commissioners of the United States for this district, to be void if the said Robert M. Thompson should well and truly make his personal appearance before the district court of the United States for said district, at Jackson, on the fourth Monday in October, A. D. 1885, then and there to answer the United States on a charge against him for violation of section 5485 of the Revised Statutes of the United States in unlawfully and wrongfully withholding pension money from a certain pensioner, and

then and there to receive the judgment and sentence of the court in the case in which this bond is entitled in said court and continue in attendance at said term of said court from day to day until discharged and abide the decision of said court in the premises, which

107 said bond was duly filed in said court on the first day of May, A. D. 1885, and now, on this seventh day November, 1885, it being one of the days of said term of court, on motion of the district attorney the said Rob't M. Thompson, being solemnly called to come into court in obedience to his said bond, came not, but therein made default, and on like motion Dew M. Wisdom and W. J. Smith, sureties of said defendant, were solemnly called to produce him according to the conditions of said bond, did not, but therein wholly failed, it is, on like motion, considered by the court that judgment *nisi* be, and it is hereby, entered in favor of the United States for the sum of \$3,000.00, the penalty of said bond against the said Robert M. Thompson and Dew M. Wisdom and W. J. Smith, and that *scire facias* issue accordingly, returnable to the next term of this court.

108 UNITED STATES OF AMERICA, }
Eastern Division of the Western District of Tennessee. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its April term, A. D. 1887, at the United States court-house, in the city of Jackson, in said district, on, to wit, the 2d day of May, A. D. 1887, in the following cause, to wit:

THE UNITED STATES, Plaintiff,
vs.
ROBERT M. THOMPSON ET AL., Defendant. } No. 351.

Came again the dist. att'y, on behalf of the U. S., and it appearing to the court from the record herein that on the 15th day of July, A. D. 1886, a writ of *scire facias* was duly issued out of this court from the clerk's office, under the seal of the court and directed to the marshal of this district, commanding him to make known to the def'ts herein the contents thereof and summon them to appear before the judge of this court, in the Federal court room, in this city of Jackson, on the fourth Monday of October then next, then and there to show cause, if any they had or knew, why the United States should not have judgment final and execution against them for the am't of the recovery and judgment *nisi* for \$3,000.00 heretofore rendered and entered herein against them, which said writ was duly returned to this court by the marshal, his return showing a proper and legal service of said writ by true copy on said def't, Wm. J. Smith, at Memphis, Tenn., on the 22d day of July, A. D. 1886, and that the other def'ts herein were not to be found in this district; and it further appearing

also from the record herein that on the 8th day of November, A. D. 1886, an alias writ of *scire facias* was also duly issued out of this court from the office of the clerk thereof and under the seal of the court, directed to the marshal of this district, commanding him to make known to the def'ts Rob't M. Thompson and Dew M. Wisdom the contents thereof and summon them to appear before the judge of this court, at the Federal court rooms, in the city of Jackson, on the fourth Monday in April, A. D. 1887, then and there to show cause, if any they had or knew, why the U. S. should not have judgment final and execution against them for the amount of said recovery and judgment *nisi*, which said writ was duly returned to this court by the marshal with his return that said defendants were not to be found in this district; and it further appearing to the court from the record herein that the said defendants have hitherto failed to make any appearance or show any cause, as aforesaid, or make any defence to this proceeding and action, but have therein wholly failed, and by proclamation the said defendants, being solemnly called again, do not appear, but therein make default, on motion of the dist. att'y, it is therefore now hereby ordered and considered by the court that the judgment *nisi* heretofore entered herein in favor of the U. S. against the said defendants be, and the same is hereby, made final and absolute, and that the United States do have and recover of and from the said Robert M. Thompson, Wm. J. Smith, and Dew M. Wisdom said sum of \$3,000.00, the penalty of the bond herein, together with the costs of this suit, and that execution issue for the collection of the same.

110

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Tennessee. }

At Jackson, in the district court of the United States within and for the said eastern division of the western district of Tennessee, in the sixth judicial circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its October term, A. D. 1901, at the United States courthouse, in the city of Jackson, in said district, on, to wit, the 29th day of October, 1900, in the following cause, to wit:

111

MONDAY, October 29th, 1900.

THE UNITED STATES
 vs.
 ROBERT M. THOMPSON. } 226.

In this cause, it appearing to the court that at the April term, A. D. 1885, the defendant was duly and regularly tried before a jury of good and lawful men, and that he was found guilty in the manner and form as alleged in the indictment therein against him; and it further appearing to the court that the said defendant was not sentenced at that term of the court, and that by an order duly entered the said cause was continued for judgment and sentence

until the next term of this court; and it further appearing to the court that the said Rob't M. Thompson, after the entry of the order above mentioned continuing the said cause to the next term of said court for judgment and sentence, entered into bond in this cause whereby he, the said Rob't M. Thompson, as principal, and Wm. J. Smith and Dew. M. Wisdom, as sureties, acknowledged themselves to be indebted to the United States in the sum of three thousand dollars (\$3,000), to be void if the said principal, Rob't M. Thompson, should well and truly make his personal appearance before this court, at the Federal court room, in the city of Jackson, on the fourth Monday in October, 1885, that being the first day of the regular October term thereof, then and there to answer the United States on a charge against him of violation of the laws of the United States by unlawfully and wrongfully withholding money from a certain pensioner named Thomas J. McCall, and then and there to receive the judgment and sentence of the court in this case and continue in attendance at said term from day to day until discharged and abide the decision of the court in the premises, which said bond was signed by the said Rob't M. Thompson, as principal, and Dew M. Wisdom and Wm. J. Smith, as sureties; and it further appearing to

112 the court that the said Rob't M. Thompson failed and refused to make his appearance at the next term of this court, to wit, the October term, 1885, following the entry of the said order above referred to continuing the said cause for judgment and *that* sentence, as he contracted to do in the said bond, and that forfeiture be taken on said bond at the said October term, 1885, and that subsequently such proceedings were had on said bond that judgment was rendered against the said Thompson, as principal, and said Smith and Wisdom, as sureties, for the full penalty thereof, and that execution was issued on said judgment and levied upon land belonging to the surety W. J. Smith, and that said land was sold and purchased by the United States, which is now the owner thereof; and it further appearing that ever since the said term of this court at which said Thompson was tried and convicted, as aforesaid, he, the said Rob't M. Thompson, has failed and refused to make his appearance before this court for judgment and sentence in this cause, and that *capias* and alias *capiases* have been duly and regularly issued at each term of the court, beginning with the said October term, 1885, addressed to the marshal of this district, commanding him to arrest the said defendant; and it further appearing to the court that the marshal has been unable to find the said defendant, Rob't M. Thompson; and it further appearing from the statement of the district attorney, in open court, that the said Rob't M. Thompson is now a resident of the District of Columbia and is not a resident of this district, and that the said Rob't M. Thompson is wilfully absenting himself from this district so that the ordinary process cannot be executed upon him by the marshal of this district, and that the said Rob't M. Thompson is now a fugitive from justice:

It is therefore considered by the court that a *capias* be issued from this court directed to the United States marshal for the Dis-

trict of Columbia, commanding him to take the body of the said
 Rob't M. Thompson, if he be found in his district, and him
 113 safely keep, so that he may have him before this court at a
 term of this court to be held for the eastern division of the
 western district of Tennessee, at the court-house, in the city of Jack-
 son, on the fourth Monday in April, 1901, then and there to receive
 such sentence as the court may impose in this case under the con-
 viction already had herein, as aforesaid. In the event it is discov-
 ered that the said Rob't M. Thompson is not to be found in the said
 District of Columbia, then it is ordered that a capias be issued
 addressed to the marshal of any other judicial district of the United
 States in which said Thompson may be found, commanding him to
 take the body of the said Rob't M. Thompson, as aforesaid, and
 have him before this court at the April term, 1901, as aforesaid, for
 the purpose of receiving such sentence as the court may impose
 upon the conviction already had herein. The clerk, in issuing said
 capias, as above directed, will attach thereto a certified copy of the
 indictment in this cause, a certified copy of the verdict of the jury
 and a certified copy of the said order continuing this cause for
 judgment and sentence to the next term, a certified copy of the
 appearance bond so executed by him, as aforesaid and a copy of
 this order for the purpose of showing the authority for the issuance
 of the said process.

114 UNITED STATES OF AMERICA, }
Eastern Division of the Western District of Tennessee. }

In the District Court of the United States within and for the East-
 ern Division of the Western District of Tennessee, in the Sixth
 Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and
 held for its April term, A. D. 1901, at the United States court-house,
 in the city of Jackson, in said district, on, to wit, the 22nd day of
 April, A. D. 1901, in the following cause, to wit:

THE UNITED STATES, Plaintiff, }
 vs. } No. 226.
 ROBERT M. THOMPSON, Defendant. }

In this cause, it appearing to the court that the capias heretofore
 issued in pursuance of the order entered herein at the last term of
 court, on the 29th day of October, 1900, in Minute Book 3, page 235,
 has been returned by the marshal of the District of Columbia un-
 executed on account of the severe illness of the defendant, Robert
 M. Thompson—

It is accordingly ordered, on the motion of the district attorney,
 that the said order above referred to, of date 29th day of October,
 1900, appearing in Minute Book No. 3, page 235, be, and the same
 is hereby, in all things renewed, and an alias capias is now directed
 to be issued to the marshal of the District of Columbia or the United

States marshal of any other district in the United States in which the said defendant may be found, commanding him to take the body of the said Robert M. Thompson, if to be found in his district, and him safely keep, so that he has him before the judge of the district court of the United States at a term of said court to be held for the said district, at the court-house, in the city of Jackson, on the
 115 fourth Monday in October next, A. D. 1901, and the clerk is directed to attach to the said *capias* certified copies of all papers as directed by the said former order, and also a copy of this order for the purpose of showing the authority for the issuance of the said writ.

116 THE UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the district court of the United States for the eastern division of the western district of Tennessee, do hereby certify that the papers hereto attached are full, true, perfect, and correct copies of the original indictment and endorsements thereon; order, of date 1st May, 1885, showing the finding of the indictment and ordering the same to be filed and directing the issuance of a *capias*; the *capias* issued in pursuance of the said order and the return thereof; order, of date 1st May, 1885, showing empanneling of jury, trial of cause, verdict of jury, continuance of cause until the next term of court for judgment and sentence, bond executed by Robert M. Thompson, with Dew M. Wisdom and Wm. J. Smith as sureties, for his appearance at the October term, 1885; order, of date 7th November, 1885, taking a conditional judgment against Robert M. Thompson and the sureties on his bond, viz., Dew M. Wisdom and Wm. J. Smith; order, of date 2nd May, 1887, taking final judgment against Robert M. Thompson and the sureties on his bond, viz., Dew M. Wisdom and Wm. J. Smith; an order, of date October 29th, 1900, directing the issuance of *capias* for Robert M. Thompson; an order, of date April 22nd, 1901, directing the issuance of an alias *capias* for Robert M. Thompson in said court, as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE UNITED STATES }
 vs. } No. 226.
 ROBERT M. THOMPSON. }

In testimony whereof I have hereunto written my name and affixed the seal of said court, at my office, in the city of Memphis, Tennessee, this 22 day of April, A. D. 1901, and of the
 117 Independence of the United States the 124th year.

{ Seal District Court of the United States, }
 { Western District of Tennessee. }

JOHN B. CLOUGH, *Clerk.*
 D. F. ELLIOTTE, *D. C.*

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Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing certificate, is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

{ Seal District Court of the United States, }
{ Western District of Tennessee. }

E. S. HAMMOND,
Judge of the District Courts of the United States
for the District Aforesaid.

Endorsed on cover: District of Columbia supreme court. No. 1186. Aulick Palmer, U. S. marshal in and for the District of Columbia, appellant, *vs.* Robert M. Thompson. Court of Appeals, District of Columbia. Filed Feb. 28, 1902. Robert Willett, clerk.

MAY 5 - 1902

Robert Willing
CLERK
Court of Appeals, District of Columbia.

APRIL TERM, 1902.

No. 1186.

No. 3, Special Calendar.

AULICK PALMER, UNITED STATES MARSHAL IN AND
FOR THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ROBERT M. THOMPSON.

BRIEF FOR APPELLANT.

ASHLEY M. GOULD,
United States Attorney for the District of Columbia.

PEYTON GORDON,
*Assistant United States Attorney for the
District of Columbia.*

Court of Appeals, District of Columbia.

APRIL TERM, 1902.

No. 1186.

No. 3, Special Calendar.

AULICK PALMER, UNITED STATES MARSHAL IN AND
FOR THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ROBERT M. THOMPSON.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The appellee on May 20, 1901, filed his petition in the court below, alleging that he was unlawfully restrained of his liberty by appellant, and praying that a writ of *habeas corpus* might issue, and that he be discharged from custody (Record, pp. 1-4). In response to the writ appellant produced the body of appellee before the court on May 31, 1901, and made a return to the writ, setting forth the cause of appellee's detention (Record, p. 28); upon the hearing the court

passed an order on December 23, 1901, discharging appellee from custody, from which order an appeal was taken to this court (Record, p. 34). The evidence adduced on behalf of appellant and appellee at the hearing was entirely documentary, and consisted of proceedings had in the district court of the United States within and for the eastern division of the western district of Tennessee, in the sixth judicial district of the United States.

In several instances the certificates of the clerk of that court included to a greater or less extent the same matter, and this has resulted in a duplication of the documents in the record. In this brief it will be sufficient to refer to a single page of the record where they may be found. From the record the following facts are to be gleaned, viz :

On the first day of May, 1885, the grand jurors in attendance upon the April term, A. D. 1885, of said court returned an indictment in five counts against appellee, charging him with violations of section 5485, Revised Statutes of the United States, by wrongfully withholding certain pension moneys due and payable by him to Thomas J. McCall (Record, pp. 74-76). Thereupon a bench warrant was issued to the marshal of the western district of Tennessee for the apprehension of appellee. He was arrested and gave bond for his appearance, appeared before the court, and was tried and convicted and the case continued for sentence until the October term, A. D. 1885, of the said court, and gave bond in the sum of \$3,000 before H. E. Andrews, United States commissioner, at Jackson, Tennessee, with Dew M. Wisdom and W. J. Smith as sureties, for his appearance at said term (Record, pp. 77-79).

He failed to appear according to his bond, and judgment *nisi* was entered in favor of the United States against him and his sureties, and a *scire facias* was ordered to issue, returnable at the next term of the court, being its April term, A. D. 1887, at which term said judgment *nisi*

was made final and absolute, and execution was directed to issue upon the same (Record, pp. 79-81).

Continuances were entered from term to term of the case against Thompson, beginning at the October term, A. D. 1885, to and including October term, A. D. 1888 (Record, pp. 12-20), and from October term, A. D. 1888, to and including the October term, A. D. 1901 (Record, pp. 37-72).

On April 22, 1901, a bench warrant was issued by Judge Hammond, of the district court for the western district of Tennessee, addressed to the marshal of the District of Columbia, commanding him to take the body of the appellee, if he be found in the District of Columbia, and have him before the said district court, at the October term thereof, to be held for said district, at the court-house, in the city of Jackson, on the fourth Monday of October, 1901 (Record, p. 73).

Under this warrant the marshal of the District of Columbia apprehended the appellee, who thereupon petitioned for the writ of *habeas corpus*, which was issued, and upon the hearing he was discharged, as above stated (for marshal's return see Record, p. 28).

The record also discloses the following facts: That there was filed on May 5, 1888, in the clerk's office of the supreme court of the District of Columbia, by United States Commissioner Bundy, certain papers showing that proceedings were instituted before him for the apprehension of appellee to secure his return to Tennessee to answer the charge pending there against him, and that he was committed to the District jail by the commissioner in default of bail in the sum of \$2,000.

The evidence as to this consists of the docket entries in the court below in criminal case No. 17128 (Record, p. 29). In explanation of the fact that nothing more than the docket entries appear in the record, it is to be said that the papers returned to be filed in the court by Commissioner Bundy cannot now be found.

Instead of resisting an application for an order for his removal to the Tennessee jurisdiction, under section 1014 of the Revised Statutes of the United States, appellee filed a petition for a writ of *habeas corpus* on May 10, 1888 (No. 17139, criminal docket), alleging that he was unlawfully deprived of his liberty by the warden of the jail, praying for the writ of *habeas corpus*, and that he might be discharged from custody (Record, pp. 30, 31). The writ was issued, and upon hearing the appellee was discharged (Record, p. 29). The court in its opinion held that the warrant and commitment of Commissioner Bundy were unauthorized by the provisions of section 1014 of the Revised Statutes of the United States, as said section covered only the arrest and removal of offenders to another jurisdiction *for trial*, and that said section applied only to cases where *no trial* had been had (Record, pp. 32, 33).

The record further discloses the fact that on June 5, 1888, appellee filed a petition for *habeas corpus*, No. 17173, criminal docket, alleging that he was "held in bondage and restrained of his liberty by one E. W. Fitch and one Wm. J. Smith without warrant of law;" and further alleging that their purpose was to clandestinely and unlawfully convey him to Tennessee, praying for the writ of *habeas corpus* and that he be discharged.

The writ was issued, and in the return of Smith and Fitch thereto they set forth that Thompson was indicted in the Tennessee jurisdiction on May 1, 1885, for violating section 5485, Revised Statutes of the United States; that he was arraigned, pleaded not guilty, and was tried and convicted of the offense; that the court continued the case until its next term for judgment and sentence; that at said next term said Thompson did not appear, and that the case had been regularly continued by the court since that time; that upon his conviction said Thompson was admitted to bail in the sum of \$3,000 for his appearance at said next term; that the respondent, Wm. J. Smith, and one Dew M. Wisdom be-

came sureties for such appearance of said Thompson; that said Thompson, unmindful of his obligation, had failed to appear, and has ever since failed to appear, in said court, and has been and still is a fugitive from justice; that through subsequent proceedings in said court against respondent, Wm. J. Smith, and his said cosurety, Dew M. Wisdom, a final judgment was entered against them in favor of the United States for said amount; that on May 4, 1888, said Thompson, at the instance of the attorney for the United States, was arrested upon a warrant issued by Charles S. Bundy, a United States commissioner; that the object of said proceedings was to secure the return of said Thompson to the United States court in Tennessee for sentence; that said Thompson was discharged from custody by Judge Montgomery, of the supreme court of the District of Columbia, on the ground that the proceedings before Commissioner Bundy under section 1014, Revised Statutes of the United States, would not lie, and that said Bundy had no jurisdiction in the matter; that respondent Fitch had been given a power of attorney to act as the agent of the respondent Smith in arresting said Thompson and surrendering him to the proper Federal authorities in Tennessee, and that said Fitch had taken the said Thompson into custody for that purpose; the respondents aver that they did not, nor did either of them, intend to remove clandestinely the said Thompson from the District of Columbia; that respondents took him to the city hall, in the city of Washington, and kept him there until his counsel came, intending that said Thompson should have opportunity to test by writ of *habeas corpus* or otherwise the right of respondent Smith to take said Thompson into his custody and to carry him to Tennessee; that after the writ issued respondents delivered Thompson to Shipman and Kincannon, who are sons-in-law of said Thompson, conferring upon them the authority previously conferred upon Fitch.

The petitioner filed a traverse to the return and contended

therein that by reason of the proceedings before Judge Montgomery the matters now in issue were *res adjudicata*. Upon the hearing before Chief Justice Bingham said Thompson was discharged from the custody of his bail, holding that the bond relied on was void because the commissioner of the circuit court of the United States before which it was acknowledged had no authority by law to take it (Additional Record, pp. 1-8).

In the petition for the writ of *habeas corpus*, which is the basis of the present appeal, it is averred that the judge of the Federal court in Tennessee had no authority to issue the warrant to the marshal of the District of Columbia under which appellee was arrested, and that the same was null and void for the following reasons, viz:

(a.) Because the documents accompanying the warrant failed to show that at the said trial of the appellee any witnesses were produced or testimony taken before the jury.

(b.) Because said documents failed to show that the case was continued from term to term until April 22, 1901, when said warrant was issued.

(c.) Because it appears on the face of the indictment that the alleged offense was barred by the statute of limitations.

(d.) Because section 5485, Revised Statutes of the United States, was enacted into law March 3, 1873, subsequent to the date of the commission of the alleged offense by appellee, as shown by letter of the Commissioner of Pensions dated March 25, 1890 (for this letter see Record, p. 21), because the money referred to in the indictment and the property of petitioner's wards came into his possession on July 1, 1872, and not later; that section 5485 was therefore an unconstitutional enactment, so far as the indictment and trial of petitioner thereunder were concerned.

(e.) Because petitioner on May 10, 1888, was detained by John S. Crocker, warden of the jail, for removal to the Tennessee jurisdiction for and on account of the identical matters set forth in the said warrant to the marshal of the District

of Columbia and under which petitioner is now detained, and upon *habeas corpus* petitioner was discharged from such custody.

(f.) Because it is sought by the district court of Tennessee and the judge thereof to have petitioner removed to said jurisdiction for sentence under section 1014, Revised Statutes of the United States, and this court has no authority under said section to order such removal under said section.

(g.) Because the said warrant to the marshal of the District of Columbia is informal, irregular, and not in accordance with law and the statutes in such case made and provided.

(h.) Because of other irregularities, informalities, and omissions apparent upon the face of the record annexed to and made a part of said warrant.

There was no opinion filed by the justice by whom the appellee was discharged on *habeas corpus*.

ASSIGNMENTS OF ERROR.

1st. The court erred in holding that the appellee was unlawfully restrained of his liberty by appellant under the bench warrant issued by the U. S. district court for the western district of Tennessee, directed to appellant as marshal for the District of Columbia, and commanding him to apprehend appellee, and to produce him before said district court.

2d. The court erred in discharging the appellee from the custody of appellant under the said writ of *habeas corpus*.

3d. The court erred in holding that appellee was not properly in the custody of appellant as such marshal under the said warrant, and in not remanding appellee to the custody of appellant as such marshal upon the hearing of the said writ of *habeas corpus*.

The substantial point involved in the several assignments of error is whether the district court of the United States for the western district of Tennessee had authority in law, under the circumstances disclosed, to issue a bench warrant, directed to the marshal for the District of Columbia, commanding him to arrest appellee if he be found in the District of Columbia, and to produce him before said district court.

Before entering upon a discussion of the question, it may be well to dispose of some other questions suggested by the record and discussed and urged upon the court below by appellee's counsel and which may be insisted upon here.

It appears (Record, pp. 10, 11) that the defendant was arraigned upon the indictment; that he pleaded not guilty; that thereupon a jury was sworn to give a true verdict "according to the law and the evidence;" that he was found guilty according to the *law* and the *evidence*, and that he was represented by counsel at his trial. It does not appear that the objection now urged, that the record fails to show that witnesses were examined, was then urged by counsel, nor is it averred in the petition or shown in the proof that the testimony of witnesses was *not in fact* taken before the jury, or that the verdict was objected to in the Tennessee court on that ground.

The objection, if well founded, should have been made in that court, and, not having been made, it must be presumed for the purposes of this hearing that the proceedings were regular.

The writ of *habeas corpus* cannot operate as a writ of error (9th Enc. of Pl. & Pr., p. 1062, and authorities cited).

The further objection urged in the petition, that appellee's arrest was null and void because the documents failed to show continuances in the case against him from term to term in the Tennessee court, is clearly unfounded. The record in fact does show such continuances down to and including the term in which the bench warrant was issued.

The further objection urged in the petition, that it is shown upon the face of the indictment that it is barred by the statute of limitations, is also unfounded. The indictment was returned by the grand jury on the first day of May, 1885; the offense is charged in each of the five counts of the indictment as having been committed on December 30, 1882, within the period of three years from the date of the finding by the grand jury (section 1044, Revised Statutes of the United States, 1878).

The further objection is urged in the petition that the act of Congress of March 3, 1873 (Revised Statutes of the United States, section 5485), was enacted subsequent to the date of the commission of the alleged offense by appellee, "as shown by a letter of the Commissioner of Pensions to appellee dated March 25, 1890," which letter will be found on page 21 of Record. This letter obviously involves simply a matter of defense and should have been availed of at the trial if the facts were as averred. Moreover, the several counts in the indictment allege the offense to have been committed on December 30, 1882. The issue of fact was settled by the verdict and cannot be inquired into by these proceedings.

It is further averred in the petition that the present proceedings are *res adjudicata* under the decision of Judge Montgomery in the *habeas corpus* proceedings, No. 17139, criminal docket (Record, pp. 30, 34), instituted by appellee upon his commitment to the warden of the jail by Commissioner Bundy under section 1014, Revised Statutes of the United States, for his removal from the District of Columbia to the Federal jurisdiction in Tennessee. Appellee makes no reference in his petition to the further proceedings in *habeas corpus*, through which he was discharged by Chief Justice Bingham from the custody of his bail, No. 17173, criminal Docket, supreme court of the District of Columbia (Addition to the Record, pp. 1-8), but at the hearing below he introduced the latter proceedings in evidence and insisted that

the present proceedings were *res adjudicata* under the decision then rendered.

The doctrine of *res adjudicata* is not applicable, because the proceedings in *habeas corpus* in both of the instances mentioned, and which resulted in appellee's discharge, are fundamentally different and dissimilar from those in the present instance.

The question at issue in the *habeas corpus* proceedings had before Justice Montgomery, No. 17139, criminal docket, as an inspection of the record in that case clearly demonstrates, and the point involved, and the only point decided, was simply whether the petitioner could properly, on the facts shown in the record, be removed from the District of Columbia to Tennessee for the purpose of sentence under a conviction already had in the Federal court of that jurisdiction. Judge Montgomery held that section 1014 was applicable only to cases where the removal of the party was to be had for the purpose of *trial*, and that the section did not cover a case where the trial had already been had in the court having jurisdiction of the offense.

In the *habeas corpus* proceedings that were instituted before Chief Justice Bingham, No. 17173, criminal docket, the petitioner had been taken into custody in the District of Columbia by his sureties on the bond given by him for his appearance for sentence in the Tennessee court, and Judge Bingham discharged the petitioner from the custody of his bail upon the sole ground that the bond or recognizance was void, as not being within the power of the United States commissioner, before whom it was acknowledged, to take such bond. The question involved in the present proceeding is not whether the petitioner can be removed under section 1014, Revised Statutes of the United States nor whether his bail had the right to his custody under the bond given in Tennessee. An entirely dissimilar question is presented, namely, whether the petitioner is properly in the custody of the United States marshal for the District of

Columbia under the *capias* issued by the Tennessee court, commanding that marshal to apprehend him and produce him before the Tennessee court.

Obviously there was involved in the decisions of Justice Montgomery and Chief Justice Bingham no matter of law or fact which can operate as an estoppel upon appellant.

Appellant was not a party to either of the other *habeas corpus* proceedings, nor was the validity of a writ from the Tennessee court, similar to the one under which he arrested and held the appellee, in any manner involved in the consideration and determination of the previous *habeas corpus* cases.

"A discharge of a party under a writ of *habeas corpus* from the process under which he is imprisoned discharges him from any other confinement under the process; but not under any other process which may be issued against him under the same indictment."

Ex parte Milburn, 9 Peters, 710.

It follows, as we have previously stated, that the only question involved in the present appeal is whether, under the circumstances disclosed in the record, the Federal court in Tennessee had lawful authority to issue the writ to the marshal of the District of Columbia under which he was arrested by said marshal.

The determination of this question depends upon the construction to be given to sections 716 and 761 of the Revised Statutes of the United States.

Section 716 reads as follows:

"The Supreme Court and the circuit and district courts shall have the power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

Section 761, which has relation to proceedings on writs of *habeas corpus*, reads as follows:

“The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice may require.”

Section 876, Revised Statutes of the United States, provides that subpoenas for witnesses who are required to attend a court of the United States in any district may run into any other district, provided that in civil causes witnesses living out of the district in which the court is held do not live at a greater distance than one hundred miles from the place of holding the same; and section 877, Revised Statutes of the United States, provides that witnesses on the part of the United States shall be subpoenaed to attend to testify generally in their behalf, and not to depart the court without leave thereof or of the district attorney.

It was held *In re Spencer, Mackey & Mac.*, p. 433, that by virtue of sections 760, 761, and 762, Revised Statutes of the District of Columbia, the supreme court of the District and the judges thereof had the same powers and jurisdiction to issue such subpoenas as were possessed by the circuit and district courts under said sections 876 and 877. The reasoning of the court in the case cited is conclusive on the point that the supreme court of the District also possesses the same powers and jurisdiction possessed by the circuit and district courts under said sections 716 and 761.

It was said in *In re Alexander*, 1 Lowell, 531:

“When an indictment has been found in one judicial district of the United States against the defendant not then within its jurisdiction, it has been much doubted whether the court in that district can issue its warrant to arrest the defendant wherever he may be found within the United States.

“The late Chief Justice Taney, then Attorney General, gave it as his opinion that the power was possessed by the

courts (2 Opinions Attorneys General, 564); and this still appears to be the opinion of the office (11 Opinions, 127). I am not aware of any decision of a court or judge upon the point, and it is not necessary to decide it now."

There seems to have been no decision precisely in point until that rendered *In re Christian* in 1897 (82 Fed. Rep., 885). The facts in that case are in all essential particulars like those involved in the present appeal. Christian had been indicted and convicted in the central district of the Indian Territory. The statute under which he was convicted provided for "hard labor" as a part of the punishment, but the sentence of imprisonment imposed upon him did not provide for "hard labor." Christian sued out a writ of *habeas corpus* in the circuit court for the western district of Arkansas against the marshal of the central district of the Indian Territory, and he was discharged from custody on account of the invalidity of the sentence (82 Fed. Rep., 199).

Thereupon proceedings were instituted for his removal to the Indian Territory under section 1014, Revised Statutes of the United States, and he sued out a writ of *habeas corpus* in the circuit court for the western district of Arkansas against the marshal of said district, in whose custody he was under these proceedings.

The court held, in deciding the case (p. 888), that Christian was not a fugitive from justice; that the United States had brought him, under a void sentence, into the Arkansas district en route to the penitentiary, and that section 1014, Revised Statutes of the United States, was not intended to apply to such a case.

The court refers to section 761, Revised Statutes of the United States, and says:

"I am inclined, however, to the opinion that under section 761 of the Revised Statutes of the United States this court might make an order of removal. It is not, however, clear. I prefer to rest the question upon another section of the statutes which I think is clear."

Section 716, Revised Statutes of the United States, is then quoted, and the court proceeds :

“ Under this statute, I think the judge of the central district of the Indian Territory has the power to issue his warrant, addressed to the marshal of the western district of Arkansas, to arrest Christian, and to send an officer here to take him back to that court to be dealt with as law and justice may require. This view is sustained by the case of Oaksmith, 11 Op. Att'ys Gen. U. S., 127 ; Randolph's case, 2 Op. Att'ys Gen. U. S., 564 ; 2 Moore, Extrad., sec. 540 ; Stanton's case, *id.*, sec. 541.”

The court finally directed that the prisoner be held until due notice could be given to the United States district attorney for the central district of the Indian Territory, that he might apply for a warrant and send an officer for Christian, and refused to admit him to bail.

The court adverts in its opinion (p. 891) to an objection made that section 716, Revised Statutes of the United States, applied to district and circuit courts, and that the judge of the central district of Indian Territory was not a judge of such a court, and referred to certain Federal Statutes giving the judge of the central district the same powers in regard to the issuing of process, &c., as possessed by the judges of the district and circuit courts.

The import of this legislation with respect to the powers conferred upon the court in Indian Territory is the same as that conferred by sections 760, 761, and 762, Revised Statutes of the District Columbia, upon the supreme court of the District of Columbia.

The order of the court below discharging the appellee, it is respectfully submitted, should be reversed.

ASHLEY M. GOULD,
United States Attorney for the District of Columbia.

PEYTON GORDON,
*Assistant United States Attorney for the
District of Columbia.*

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED

MAY 6 - 1902

Robert Willard
CLERK

In the Court of Appeals of the District of Columbia.

APRIL TERM, 1902.

No. 1186.

AULICK PALMER, United States Marshal
in and for the District of Columbia,
Appellant,

vs.

ROBERT M. THOMPSON.

Brief of Appellee.

GEORGE C. MEIGS,
EDWIN FORREST,
Attorneys for Appellee.

In the Court of Appeals of the District of Columbia.

APRIL TERM, 1902.

No. 1186.

AULICK PALMER, United States Marshal
in and for the District of Columbia,
Appellant,

vs.

ROBERT M. THOMPSON.

Brief of Appellee.

Statement of the Case.

This is an application by Robert M. Thompson, a citizen of the United States and resident of the District of Columbia, to be discharged from the custody of the appellant by habeas corpus [proceedings]. The facts as shown by the record are substantially these :

That at the trial term of the Circuit Court of the United States in and for the Western District of Tennessee in the Sixth Judicial Circuit, the grand jury returned an indictment against the appellee charging him, in the first count thereof, on the 24th day of September, 1877, at Purdy, in the County of McNairy, State of Tennessee, with being the person instrumental within the intent and meaning of section 5485, of the Revised Statutes of the United States, in prosecuting a certain claim of Leonora E. McCall and Thomas J. McCall, minors, against the United States for pension, and that on the 30th day of

December, 1882, at the same place, wrongfully withholding from the said Thomas J. McCall one thousand dollars, a certain part of said claim allowed by the United States, and then and there due the said McCall, as such claimant, contrary to law. The second count is the same, except that it charges that the appellee was the person instrumental in the prosecution, etc., on the 26th day of April, 1882. The third count charges that the appellee was the person instrumental in the prosecution, etc., on the 5th day of February, 1872, and on the 26th day of April, 1872, there was allowed by the United States on said claim \$2,000, and on the 30th day of December, 1882, he withheld the amount of \$1,000 from Thomas J. McCall. The fourth count charges that on February 5, 1872, the appellee was appointed guardian of the McCalls; that they were claimants against the United States for pension, and that the appellee was, as such guardian, instrumental in the prosecution, etc., of the claim and thereafter, as such guardian, received and collected from the United States \$1,000, which on the 30th day of December, 1882, was due to said Thomas J. McCall, as such pensioner, and the appellee wrongfully withheld from said McCall \$1,000. The fifth count charges that on the 5th day of February, 1872, the McCalls, minors, had a claim against the United States for pension; that appellee was appointed guardian for the minors, and as such was instrumental in the prosecution of the claim, and between April 25, 1872, and the 25th day of December, 1877, the appellee collected and received from the United States for said McCall \$1,000, which, on the 3d day of December, 1882, became due to said McCall, and the appellee unlawfully withheld the same from him (R., 6, 7, 8); that on the indictment the appellee, on the 1st day of May, 1885, was arrested and gave bond before a United States Commissioner for his appearance (R., 10); that there-

after, and on the same day, the appellee was arraigned and pleaded not guilty, and a jury being empanelled, returned a verdict against him of guilty in manner and form as charged in the indictment, "and on motion and for satisfactory reasons to the court appearing, it is ordered that this case be continued for judgment and sentence to the next term" (R., 10, 11); that subsequent continuances were had of the cause at each term of the court down to and including the April term, 1901 (R. 13 to 21 and 36 to 73).

That on the 12th day of May, 1888, Robert M. Thompson, appellee, filed a petition in the Supreme Court of the District of Columbia for a writ of habeas corpus alleging, among other things, that he was unjustly and unlawfully imprisoned by the warden of the jail on what was alleged to be the indictment heretofore described in this statement, and that the same was void at the time it was presented because the alleged offense charged was then barred by the statute of limitations, and the grand jury had then no jurisdiction over the alleged offense, nor had the court jurisdiction to receive the indictment, and further because section 5485 of the Revised Statutes had been repealed and did not therefore give jurisdiction to the grand jury and the court to present, receive or entertain the indictment; that it was void under said section and there was no law of the United States upholding said indictment and the same was void; that after said indictment was found the accused was arraigned thereon and such proceedings had in court that Robert M. Thompson was discharged from the indictment and the alleged accusation and offense and by consent of the prosecuting officer of the United States and the judge of the court, was allowed to leave the jurisdiction and did leave the State of Tennessee and come to the District of Columbia with the full knowledge and consent of the court and the prosecuting officer (R., 30, 31); that on said peti-

tion the writ was ordered to issue (R., 31); that return thereto was duly made by the respondent and the matter coming on for hearing on June 4, 1888, the court held that Thompson was unlawfully restrained of his liberty and discharged him (R., 32, 33).

That on the 5th day of June, 1888, Thompson was again arrested at the instance of the sureties who had gone on his bond to appear for sentence at the October term, 1885, of the court in which he was convicted and thereupon he sued out an application for a writ of habeas corpus; that the writ was issued returnable on the 9th day of June before the Chief Justice of the Supreme Court of the District of Columbia (Add. to R. 1, 2); that to said petition a return was made (do. 2, 3, 4, 5); that to such return the petitioner made answer and traverse (do. 5, 6, 7) and the matter coming on for hearing on June 9, 1888, an order was made in said case discharging Thompson from custody (do. 8).

That in the petition filed in this cause the appellee recited that he was illegally and unlawfully restrained of his liberty and unjustly and unlawfully detained in the custody of the appellant as United States marshal, and that such unlawful and illegal detention and illegal restraint was claimed by the marshal to have been done and taken under and by virtue of the certain alleged order or command of the Judge of the District Court of the United States for the Western District of Tennessee (R., 1); that said order or command (R., 5) was issued without any authority whatever and was null and void, because:

a. The papers and documents accompanying the same failed to show that at the alleged trial any witnesses were produced or testimony taken before the jury, the petitioner having pleaded not guilty;

b. The court was without jurisdiction or authority to pass

or make the orders of October, 1900, and April, 1901, in the papers referred to ;

c. That said indictment shows on its face that the alleged offense was barred by the Statute of Limitations ;

d. Section 5485 of the Revised Statutes of the United States was enacted into law by Congress on March 3, 1873, subsequent to the date of the commission of the alleged offense by the petitioner, as shown by the letter of the Commissioner of Pensions, dated March 25, 1890, accompanying the petition ;

e. The matters set forth in the papers and documents referred to and the order or command and the matters therein referred to had already been adjudicated and passed upon and the defendant discharged and the matters therein contained were *res adjudicata*, and therefore the petitioner should not be held in custody or restrained of his liberty on account of such matters ;

f. Section 1014 of the Revised Statutes of the United States, under which it is proposed to remove the petitioner to the said District Court for judgment and sentence, has no application to the case of the petitioner, and the court is without authority thereunder to order the removal of the petitioner, or the marshal to detain him for such purpose ;

g. The order or command is not in accordance with the law and the statute, is informal and irregular, as also the record and proceedings annexed to and made part of the same (R., 1, 2, 3).

Upon said petition, and on May 22, 1901, the writ was ordered to issue, returnable before Mr. Justice Clabaugh, on Friday, May 31, 1901 (do., 4), and on the latter date the appellant, as the respondent, made return, producing the body of the appellee, and saying that he was taken and detained under and by virtue of the capias issued to him as marshal by Judge Hammond, of the District Court of the

United States for the Western District of Tennessee, issued on April 22, 1901 (do., 28). That on December 23, 1901, the matter coming on to be heard upon the petition, the rule to show cause and the return, the court ordered the discharge from custody of the appellee (do., 34). From this order the appellant appealed.

Appellee's Motion to Dismiss.

A motion was made to dismiss the appeal taken in this case from the order discharging the appellee from custody on the ground that the United States, being the real party in interest, had no right under the law to take such action.

It has not been thought necessary to refer to any authorities in support of this motion, because, as counsel understand, the United States has no right to appeal in a case of this character unless specially authorized so to do by statute.

If, however, the court should be of opinion that the United States is not a party to this cause, but Aulick Palmer, then the appeal should be dismissed because the bond required by the rule of court for costs has not been furnished; and on the additional ground that as United States marshal, the appellant has not such interest as entitles him to prosecute an appeal.

There have been several cases appealed by the United States, or officers thereof, to this Court in habeas corpus cases, but so far as counsel have been able to ascertain the question as to the right of the Government to appeal has never been raised or passed upon by this Court.

“The right of the relator, respondent, defendant or plaintiff to prosecute an appeal or writ of error from a decision in a *habeas corpus* case, and the proper parties to this proceeding, appear to be governed by statutory

provisions which must be consulted in determining this question.

Ency. Pl. & Pr., Vol. IX, 1081.

"The respondent on an application for a writ of *habeas corpus* cannot appeal from the judgment of the district court or a judge sitting in chambers. The appeal in such case is restricted to the applicant."

McFarland *vs.* Johnson, 27 Tex., 105.

Nor can an appeal from a final order discharging the prisoner on *habeas corpus* be maintained by the officer having him in custody, as the latter has no interest in the matter though he is a party to the writ.

Matter of Quinn, 2 N. Y. App. Div., 103.

A judgment in *habeas corpus* proceedings, either discharging the prisoner or remanding him, cannot be reviewed on appeal or writ of error unless authorized by statute. (See English cases cited in *People vs. Fairman*, 59 Mich., 568, and by Kent, C. J., in *Yates vs. People*, 6 Johns, 337, 423-432; *McFarland vs. Johnson*, 27 Tex., 106; *Bell vs. State*, 4 Gill, 301, 304; 45 Am. Dec., 130; *Ex parte Jilz*, 64 Mo., 205; 27 Am. Rep., 218; *Hammond vs. People*, 32 Ill., 446; 83 Am. Dec. 286; *Weddington vs. Sloan*, 15 Mon. B., 147, 153; *Wade vs. Judge*, 5 Ala., 130; *Guilford vs. Hicks*, 36 Ala., 95; *People vs. Conant*, 59 Mich., 565; *Coston vs. Coston*, 49 Md., 500; *In re Coston*, 23 Md., 337; *People vs. Schuster*, 40 Cal., 627; *In re Gill*, 17 S. W. Rep. (Ky.) 166; *Mead vs. Metcalf*, 25 Pac. Rep. (Utah), 729; *Ex parte Mitchell*, 1 La. An., 413; *Ex parte Thompson*, 93 Ill., 89.

Merits.

The appellee has not been furnished with the assignments of error relied upon for reversal of the order below, but assumes that the principal reason to be urged why the

judgment should be reversed is, that the court erred in discharging the appellee.

The principal grounds relied upon in the petition, and insisted upon at the hearing below by the appellee, were :

1. That the judge of the District Court of the United States for the Western District of Tennessee had no right or authority to issue the *capias* to the appellant, commanding him to take the body of the appellee "and him safely keep" so that he could be produced before said judge at a succeeding term of said court.

2. Because the indictment on its face shows that it was found more than three years after the alleged offense was committed.

3. Because the statute under which the indictment was found was enacted subsequent to the date of the commission of the alleged offense.

4. Because on a former petition filed by the appellee for discharge on writ of habeas corpus and the return of the respondent, an adjudication was had of the same matters in controversy on this application, and an order or judgment made on hearing, discharging the petitioner which is conclusive as matter *res adjudicata*.

5. That it was not competent or lawful to order the removal of the petitioner by virtue of said *capias*, under Section 1014 of the Revised Statutes of the United States.

6. That it was not competent or lawful to order the removal of the petitioner, under section 716 of the Revised Statutes of the United States.

1.

Counsel have been unable to find any authority supporting the right of the Judge in Tennessee to issue the *capias* for the arrest of the petitioner by the U. S. marshal in this District, and his removal thereby from this District under order of court.

The contention of the appellee is that there is no statute which lodges the power in a Judge in Tennessee to issue such an order or command to an official under the circumstances in this case, nor authority in the Supreme Court of the District to recognize it and order the removal by virtue thereof. The fact that precedents for such action do not seemingly exist lead one to the inevitable conclusion that such an act was never attempted before, save in the instance hereinafter referred to. To claim such extraordinary right upon the part of a foreign court or judge would seem to require ample statutory authority for its exercise.

The crucial test is, if the official, the U. S. marshal in this instance, refuse to obey, has the foreign judge any power to enforce, as for contempt or otherwise, the disobedience? If not, then, necessarily, the judge is without jurisdiction. Nothing, it is submitted, is plainer than this proposition.

The only authority cited by the respondent in support of his position, that the judge of the court in Tennessee had the authority to issue his *capias*, directed to the marshal is, *In re Christian*, 82 F. R., 885, and the district judge in delivering the opinion of the court cites as authority in support of his view, two opinions of the Attorneys-General of the United States, reported in 2 Ops. Atty. Genls. U. S., 564, Randolph case, and 11 Ops. Attys. Genls. U. S., 127, Oaksmith's case, and 2 Moore Ex., secs. 540 and 541. In the opinion, *in re Christian*, the court says :

"It was the argument of Mr. Ruhm which finally satisfied me of the law of this case, and, for the benefit of those who may not have access to Moore on Extradition, I append it in a footnote to this opinion." The argument referred to for its support is based likewise upon the two opinions referred to as is also the text in Moore on Extradition.

The first of the opinions referred to, delivered by R. B,

Taney, as Attorney-General, under date of May 14, 1833, was in answer to the question, "whether the judge of the Supreme Court residing in the fifth district, or a district judge of one of the districts of Virginia, can issue a warrant to arrest Robert B. Randolph for the assault committed in the District of Columbia, on the President of the United States; it having been ascertained that Randolph is now somewhere in the State of Virginia." The Attorney-General holds that "according to my view of the case, a warrant from any of the judges of the Circuit Court of this district would warrant the arrest of Randolph anywhere in the United States, and I see no necessity for an application for any other. But as doubts have been taken from respectable authority on this point, and an attempt to arrest under such a warrant might be forcibly resisted and lead to violence, I advise that an application be made to the Chief Justice of the United States. If he issues a warrant, no one will question its legality. If he decides that he has no right to issue it, I shall be willing to believe that I am mistaken in the opinion I have formed." * * * "The United States possess more extensive powers in this District than they do in the States; but this must not destroy the identity of the Government. An offense against the United States committed in the District is an offense against the same sovereignty as if committed in one of the States. And I cannot imagine how the words or the spirit of the 33rd section of the Act of 1789 can be supposed to embrace the one and not the other."

(The section referred to is now known as Section 1014 R. S. U. S.)

No action, however, appears to have been taken on this opinion, since no prosecution against Randolph was instituted (3 Parton's Life of Andrew Jackson, 488).

The second of the opinions referred to delivered by J.

Hubley Ashton, acting Attorney-General, under date of December 10, 1864, was in answer to a question how a request relative to the arrest of one Oaksmith could be complied with ; and in answer he gives as his opinion, "that either Judge of the Circuit Court of the United States for the District of Massachusetts has authority, under the act of September 24, 1789, Sec. 33 (1 St., 91), to issue a warrant for the arrest of Oaksmith ; and that under such a warrant he may be lawfully arrested anywhere in the United States." Mr. Ashton also quotes the opinion of Mr. Taney.

It will be noticed that both of these opinions rely upon Section 1014 as authority for the action advised, while the opinion in 82 F. R. says : "I have not found any case where that section (1014) has been held to be authority for removing a party for any other purpose than for trial", and further, "I am inclined, however, to the opinion that under section 761 of the Revised Statutes of the United States this court might make an order of removal. It is not, however, clear. I prefer to rest the question on another section of the statute, and which I think is clear. I refer to Section 716 of the Revised Statutes of the United States, which is as follows :

"The Supreme Court and the Circuit and District Courts shall have have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

"Under this statute I think the judge of the Central District of the Indian Territory has the power to issue his warrant, addressed to the marshal of the Western District of Arkansas to arrest Christian, and to send an officer here to take him back to that court to be dealt with as law and justice may require."

In this case a nol. pros. was entered May 28th, 1875, after Oaksmith had been pardoned by the President.

As we understand it, the appellant does not rely upon Section 1014 as the authority to order the removal of the appellee, as that section only contemplates and provides for the arrest, detention and return of an accused for trial. In this case a so-called trial has been had, and therefore sole reliance is placed upon Section 716. This section, however, only confers authority to issue such writs as may be necessary for the exercise of the jurisdiction of the Supreme Court of the District in this case, "and agreeably to the usages and principles of law." Jurisdiction must first be shown before the right to issue necessary writs to enforce it can be exercised. The construction of this Section 716 R. S. U. S. (Section 14 of the Judiciary Act) has frequently been passed upon by the Supreme Court of the United States.

In *Rosenbaum vs. Bauer*, 120 U. S., 450, Blatchford, J. delivering opinion of Court, said:

In *McIntire vs. Wood*, in 1813, 7 Cranch, 504, it was held that a circuit court had no power to issue a mandamus to the register of a land office of the United States, commanding him to grant a final certificate of purchase to the plaintiff for lands to which he supposed himself entitled under the laws of the United States. In that case, the plaintiff's alleged right to a certificate of purchase was claimed under the laws of the United States, but this court, speaking by Mr. Justice Johnson, said, that the power of the Circuit Courts to issue the writ was confined by Sec. 14 of the Judiciary Act of 1789, 1 Stat. 81, to those cases in which it might be necessary to the exercise of their jurisdiction. This provision of Section 14, appears now in section 716 of the Revised Statutes in these words: "Sec. 716. The Supreme Court and the Circuit and District Courts shall have power to issue writs of *scire facias*. They

shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

In *McLung vs. Silliman*, in 1821, 6 Wheat., 598, a mandamus was applied for in a Circuit Court of the United States, to compel the register of a land office of the United States to issue papers to show the preemptive interest of the plaintiff in certain land. The writ was refused. In this court, the case was sought to be distinguished from *McIntire vs. Wood*, on the ground that the parties were citizens of different States. But the court, speaking again by Mr. Justice Johnson, said that no just inference was to be drawn from the decision in *McIntire vs. Wood*, in favor of a case in which the Circuit Court was vested with jurisdiction by citizenship under section 11 of the act of 1789. And then in answer to the argument, that, as the parties were citizens of different States, and competent to sue under section 11, the Circuit Court was, by section 14, vested with power to issue the writ as one "necessary for the exercise of its jurisdiction," the court said: "It cannot be denied that the exercise of this power is necessary to the exercise of jurisdiction in the court below; but why is it necessary? Not because that court possesses jurisdiction, but because it does not possess it. It must exercise this power and compel the emanation of the legal document, or the execution of the legal act by the register of the land office, or the party cannot sue. The 14th section of the act under consideration could only have been intended to vest the power now contended for in cases where the jurisdiction already exists, and not where it is to be courted or acquired by means of the writ proposed to be sued out."

Consistently with the views in those cases, this court, in *Riggs vs. Johnson*, in 1867, 6 Wall., 166, held that a circuit court had power to issue a mandamus to officers of a county, commanding them to levy a tax to pay a judgment rendered in that court against the county for interest on bonds issued by the county.

This ruling has been repeatedly followed since, and rests on the view that the issue of the mandamus is an award of execution on the judgment, and is a proceeding necessary to complete the jurisdiction exercised by rendering the judgment.

In many cases adjudgee in this court since *McIntire vs. Wood*, that case has been referred to as settling the law on the point to which it relates; as in *Secretary vs. McGarrahan*, 9 Wall., 298,311; *Bath Co. vs. Amy*, 13 Wall., 244; and *Heine vs. The Levee Commissioners*, 19 Wall., 655.

In *Bath County vs. Amy*, in 1871, (*ubi supra*) the holder of bonds issued by a county in Kentucky applied to the circuit court of the United States for a mandamus to compel the county court to levy a tax to pay the interest on the bonds, on the ground that a statute of the State required the county court to do so. No judgment has been obtained for the interest. In Kentucky such a proceeding could have been maintained in a court of the State, without a prior judgment, and would have been there treated as a suit of a civil nature at common law, and not a mere incident to another suit. The circuit court awarded the mandamus, but this court reversed the judgment, holding that it was doubtful whether the writ of mandamus was intended to be embraced in the grant of power in the 11th section of the Judiciary Act of 1789, to the circuit courts, to take cognizance of suits of a civil nature, at common law, where the diversity of citizenship there specified existed; but that the special provision of the 14th section of the act, while, no doubt, including mandamus under the term "other writs," indicated that the power to grant that writ generally was not understood to be covered by the 11th section. Citing the prior cases, the court said: "The writ cannot be used to confer a jurisdiction which the circuit court would not have without it. It is authorized only when ancillary to a jurisdiction already acquired."

In the case of *Gares vs. Northwest Nat. Bldg. L. & I. Asn.*, 55 F. R., 209, it is said: "These decisions (refer-

ring to *McIntire vs. Wood*, 7 Cr., 504; *Bath Co. vs. Amy*, 13 Wall., 244; *Rosenbaum vs. Bauer*, 120 U. S., 450) are based upon the ground that the eleventh section of the judiciary act of 1789, which confers upon the circuit courts jurisdiction of all suits of a civil nature, at common law and in equity, between a citizen of the State where the suit is brought and a citizen of another State, does not include the proceeding for mandamus, which is neither an action at law nor a suit in equity, and this construction is held to be further supported by the language of the fourteenth section, which gives to the circuit courts power to issue "writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law", thereby expressly limiting the power to issue the writ of mandamus to cases where it may be necessary for the exercise of a jurisdiction otherwise conferred by the act.

It is urged on behalf of the petitioner that this construction was adopted upon the theory that the writ of mandamus is here, as at common law, a prerogative writ, and it is contended that the reason of the rule does not exist in Oregon, where, by statute, the proceeding for mandamus is made a suit between private parties for the redress of private wrongs, and therefore becomes a suit of a private nature at common law or in equity within the language of Section 11 of the judiciary act. The same contention was made in the case of *Rosenbaum vs. Bauer*, *supra*, and the attention of the court was there expressly directed to the fact that in California, where that suit arose, the writ of mandamus was not prerogative, but on the contrary, by the adjudications of the State courts, had uniformly been held to be a civil action. Notwithstanding this fact and the argument thereon based, the majority of the court adhered to the rule previously followed, and refused to consider the proceeding for mandamus a suit of civil nature, at common law or in equity. It must be regarded, therefore, the settled rule that the

United States circuit courts have no authority to issue writs of mandamus except as ancillary to some other proceeding which shall have established a demand, or reduced it to judgment, in which case the mandamus may issue in the nature of process for executing the judgment, or otherwise for the enforcement of rights sought to be protected in the suit."

Wayman *vs.* Southard, 10 Wheaton, 1.

2.

Section 1044 of the Revised Statutes of the United States as amended by Act of April 13, 1876, provides :

"No person shall be prosecuted, tried or punished for any offense, not capital, except as provided in Section 1046, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed.

"But this act shall not have effect to authorize the prosecution, trial or punishment for any offense, barred by the provisions of existing laws."

The indictment in its various counts clearly shows that the Statute of Limitations applies to the charge made. The receipt of the money by the petitioner is charged in one count in February, 1872, and the withholding of it at that time, and in another count between April, 1872, and December, 1877, and the indictment was not found and filed until May 1, 1885.

"Whenever the set or series of acts necessary to constitute a criminal withholding of the money have transpired, the crime is complete, and from that day the Statute of Limitations begins to run against the prosecution."

United States *vs.* Clark Irwine, 98 U. S., 450.

It also appears by Exhibit C to the petition that the petitioner had nothing whatever to do with the case which was

filed in the Pension Bureau " June 19, 1866, by James F. McKinney, guardian, and was allowed in his favor as such guardian January 18, 1872, and the pension certificate 155,518 was forwarded to the pension agent at Nashville, Tenn., January 19, 1872. A. Hart, Washington, D. C., filed power of attorney in the case April 8, 1871, signed by James McKinney, guardian, and was recognized and allowed the fee " (R. 21).

The statement or letter annexed to the petition as part thereof, was not in any way met by the return by a denial and is to be taken as true.

" In a petition for a writ of habeas corpus verified by petitioner's oath, as required by Rev. St. 754, facts duly alleged may be taken to be true unless denied by the return or controlled by the evidence, but no allegation of fact in the petition can be assumed to be admitted unless distinct and unambiguous."

Whitten vs. Tomlinson, 160 U. S., 231, 40 L. Ed., 406.

The section 1044 is mandatory that no person shall be prosecuted, tried or punished unless the indictment is found within three years.

If it appears that it was not so found, the court in Tennessee was without jurisdiction to hear or entertain the indictment.

" The jurisdiction of all the Federal Courts should appear upon the face of the proceedings. The courts of the United States are all of limited jurisdiction and these proceedings are erroneous, if the jurisdiction be not shown upon them."

Ex parte Watkins, 3 Peters, 193.

It may be added that although the defendant pleaded not guilty to the indictment, there nowhere appears in the return or the proceedings and records accompanying it, that any witness appeared before the jury that is alleged to have

found him guilty in support of the charge. The certificate of the clerk (R., 84) is that the papers are true copies, etc.

3.

The statute under which the petitioner was prosecuted in the court in Tennessee was enacted on March 3, 1873 (and known as Sec. 5485 R. S. U. S.), more than a year after the receipt of the money allowed by the Bureau of Pensions to the guardian of the McCalls, and, therefore, there was no law in existence at the time of the receipt or payment of the money which made it a crime to withhold the same, as prescribed by Section 5485.

In the case of the United States *vs.* Louis Benecke (98 U. S., 447), it was there held, in a case where it was sought to apply the provisions of this same statute to an offense committed subsequent to its passage, as follows :

“It is argued by counsel that withholding the money due is a continuous offense, and if the same money was withheld after the Act of 1873 did make such withholding punishable, the indictment is good under that Act. But without deciding here how far the withholding the money under a law which made that an offense when the wrongful withholding began can be held to be a continuous offense, we are of opinion that it would be a forced construction of the Act to hold that it was intended to apply to a case where the money had already been withheld five years when the statute was passed. The party might very well be criminally wrong in failing to pay when he received it; but Congress could hardly be supposed to intend to punish as a crime his failure to pay afterwards what was in law but a debt created five years before.”

It appears from the petition filed in this cause, and the record, that upon May 10, 1888, the petitioner filed in the Supreme Court of the District of Columbia a petition for a writ of habeas corpus (R., 30) setting forth substantially the

same ground urged in the present application for his relief and discharge from arrest and detention, and that on such application, and on the return of the respondent therein, the warden of the jail, an order was made discharging him. From the order so discharging him no appeal was taken, and the same remains in full force and effect.

The petitioner therefore claims that the matters and things set up in the present petition have already been adjudicated and the doctrine of *res adjudicata* should apply.

The record does not disclose any change whatever in the condition of the case as it existed at the time of the petitioner's former discharge.

The doctrine of *res adjudicata* was lately before this Court and it held as follows :

If the prisoner is discharged from custody on the hearing on a writ of habeas corpus, such order or judgment amounts to an adjudication, and is conclusive in his favor as matter *res adjudicata* if he should be again arrested, unless some fact could be shown for holding him which did not exist at the time of his discharge. (U. S. *vs.* Chung Shee, 71 Fed. Rep., 277 ; 1 Freeman on Judgments, Sec. 324 ; Church on Habeas Corpus, Sec. 386.)

The case will be deemed *res adjudicata* as to all points necessarily involved, whether they were actually presented or not. (Perry *vs.* McLendon, 62 Ga., 598 ; Palmer, U. S. Marshal, etc., *vs.* Colladay, 29 Wash. L. Rep., 532.)

In habeas corpus to release one convicted of crime in a State court, where the judgment has been affirmed by the State supreme court and a writ of error to the Supreme Court of the United States has been dismissed for want of jurisdiction, it cannot be assumed that any point on which jurisdiction by the latter court might have been sustained was overlooked, merely because that point was not specifically raised therein or in the State supreme court. (Craemer *vs.* State of Washington, 18 S. Ct., 1 ; 168 U. S., 124 ; L. Ed., 42, 407.)

The legality of a discharge at common law could not be brought in question (*Cox vs. Hakes*, 15 App. Cases, 506, 514; *City of London's case*, 8 Co. Rep., 121b); and in the United States it has been held that a discharge in a criminal case on habeas corpus upon the merits, or for want of jurisdiction, being conclusive and not appealable, the prisoner cannot be lawfully arrested and imprisoned again for the same offense upon the same state of facts. (*Ex parte Jilz*, 64 Mo., 205; 27 Am. Rep., 218; *In re Crow*, 60 Wis., 349.) In the case last cited it is held that while a judgment of discharge upon a writ of habeas corpus remains unreversed, no order for a rearrest and imprisonment can be made. No reversal, however, is necessary where such a judgment was rendered without jurisdiction. (*Spalding vs. People*, 7 Hill, 301, 304.)

A writ of habeas corpus will not issue where it appears by the petition that the question at issue has been decided adversely to the petitioner by another judge in a cause on trial in the same court, especially when such decision can be reviewed by the full court * * * but can never be reviewed if the petitioner should be discharged upon this proceeding. (Decision of Judge Wallace *in re* *Summons*, 45 Fed. Rep., 241.)

The laws of the United States (Sections 753-761 Rev. Stat.) providing for the issuance, trial and disposition of proceedings by habeas corpus are the supreme law of the land. They extend to every foot of its soil and under the circumstances described above are controlling or expressive of the sovereignty of the United States in a matter within the bounds of its jurisdiction. A judgment of acquittal by the courts of the United States thereunder will as to the issues involved protect the relators from prosecution or molestation elsewhere.

Kelly et al. vs. State of Georgia, 68 Fed. Rep., 652.

A judgment of a Federal Court discharging on habeas corpus a Chinese emigrant detained on board a vessel pursuant to a collector's decision, and permitting her to land, is conclusive of the right of entry, and that right cannot be re-examined by any subsequent proceedings for deportation.

U. S. *vs.* Chung Shee, 76 Fed. Rep., 951.

A judgment of a Federal Court discharging on habeas corpus a Chinese emigrant from detention on board the vessel and permitting her to land is conclusive as to her right to come into the country.

U. S. *vs.* Chung Shee, 71 Fed. Rep., 277.

A judgment remanding the prisoner must, however, be distinguished from a judgment discharging him. At common law, no appeal, writ of error or demurrer was allowed to a judgment of discharge (*Cox vs. Hokes*, 15 App. Cas., 506, 514; *City of London's Case*, 8 Co. Rep., 121*b*); and in the absence of statutory provisions, the rule has been, almost uniformly, that a judgment of a court of competent jurisdiction discharging a prisoner in habeas corpus is conclusive, at least as to the state of facts then existing; a bar to any further proceedings upon such facts, and not subject to appeal or writ of error on the part of the people. (*Hammond vs. People*, 32 Ill., 446; 83 Amer. Dec., 286; *State vs. Grottkan*, 73 Wis., 589; 9 Amer. St. R., 816; *Ex parte Jilz*, 64 Mo., 205; 27 Am. Rep., 218; *People vs. Brady*, 56 N. Y., 182; *Com. vs. McBride*, 2 Brewster, 545; *McConolozine's case*, 107 Mass., 154; *People vs. Conant*, 59 Mich., 565; *People vs. Farmon*, 59 Mich., 568; *in re Crow*, 60 Wis., 349; *State vs. Brownell*, 80 Wis., 563; *Com. vs. Smith*, 1 Brewst., 547; *in re Clasby*, 3 Utah, 183; *Grady vs. Superior Court*, 64 Cal., 155; a case of contempt, and this is the rule in Wis-

consin, whether such court issued the writ of habeas corpus in the first instance or adjudicated the matter in certiorari to a court commissioner who issued the writ ; *State vs. Grottkan*, 73 Wis., 589, 9 Am. St. Rep., 815. In *People vs. Cunningham* 3 Parker, Cr. C., 531, the decision by one court or magistrate on a question of admitting to bail was held to be final and conclusive as to co-ordinate jurisdictions ; and in *Perry vs. McLendon*, 62 Ga., 598, the judgment on a habeas corpus proceeding was said to be final until reversed, and though twice drawn in question, the judgment in that case was pronounced conclusive. It was also held that all matter as to points necessarily involved was *res judicata*, whether actually presented or not.

Note to Sec. 386, *Church in Habeas Corpus*.

The court cannot relieve one on habeas corpus on the ground of a previous discharge on another writ, where he produces no evidence of the cause of the first arrest, nor the record of the prior proceedings.

Ex parte Powell, 20 Flor., 806.

That one is reimprisoned for the same offense from which he was lawfully discharged under writ of habeas corpus is not sufficient to entitle him to another writ, in the absence of evidence that the officer who issued and tried the writ under which he was charged had jurisdiction.

Corneilson vs. Toney, 12 Ky. Law Rep., 746.

The laws of the United States providing for the issuance, trial and disposition of proceedings by habeas corpus (R. S., Secs. 753-761) are the supreme law of the land ; they extend to every foot of the soil, and are controlling in matters within the bounds of Federal jurisdiction. A judgment of acquittal thereunder by a Federal court will, as to the issues involved, protect the relators from prosecution elsewhere.

Kelly vs. State of Georgia (D. C.), 68 F., 652.

This principle also applies to custody of infants in habeas corpus.

"An adjudication of a Court of Record, or an officer having authority to act in the matter, on the question of the custody of an infant, brought up on habeas corpus, is conclusive upon a subsequent application."

Mercian vs. People, 25 Wend., 64 (35 Amr. Dec., 653).

The determination of a court on habeas corpus for the custody of a child is conclusive in a subsequent application for the writ based on the same state of facts.

In re Sneden, 105 Mich., 61 (52 N. W., 1000).

The doctrine of *res adjudicata* in the absence of a new state of facts applies to a discharge on habeas corpus, even when used to obtain custody of children.

Weir vs. Marley, 99 Mo., 484 (6 L. R. A., 674.)

5.

Section 1014 of the Revised Statutes of the United States prescribes the method of removing a person charged with crime from one jurisdiction to another only for the purposes of trial and clearly has no application to this case, where a trial so-called has already been had.

6.

For reasons heretofore shown under head 1, it is submitted that it is clear that section 716 does not apply.

In habeas corpus proceedings, the jurisdiction of the court to which it is sought to remove the person charged is open to attack as clearly appears from the following authorities:

"From this review of the law it is apparent, therefore, as before suggested that, in a case like the present, where the prisoner is in execution upon a conviction the

writ ought not to be issued, or, if issued, the prisoner should at once be remanded, if the court below had jurisdiction of the offense, and did no act beyond the powers conferred upon it. The court will look into the proceedings so far as to determine this question. If it finds that the court below has transcended its powers, it will grant the writ and discharge the prisoner, even after judgment." *Ex parte Kearney*, 7 Wheat, 38; *Ex parte Wells*, 18 How., 307 (59 U. S. XV, 421); *Ex parte Lange*, 18 Wall., 163 (85 U. S. XXI, 872).

A district judge, before issuing a warrant, under Revised Statutes, Sec. 1014, for the removal of a person arrested in his district to another district for trial, is entitled to determine whether the district court of such other district has jurisdiction of the offense with which the prisoner is charged, and his determination is reviewable in the Circuit Court by writ of habeas corpus. (U. S. *vs.* Horner, D. C., 1891, 44 F. 677, affirmed; Horner *vs.* U. S., 12 S. Ct. 407, 143 U. S. 207, 36 L. Ed. 126.)

By a habeas corpus proceeding the jurisdiction of a court trying a person may be inquired into, and the court having power to issue the writ will look into so much of the proceedings as will enable it to determine whether jurisdiction exists or not.

Ex parte Farodey, 40 F., 66.

On habeas corpus to release a person held under a warrant of a United States commissioner to await an order of the district judge for his removal to another district to answer an indictment, the circuit court should examine the indictment to ascertain whether it charges any offense against the United States, or whether the offense comes within the jurisdiction of the court in which the indictment is pending.

In re Greene (C. C.), 52 F., 104.

The jurisdiction of the court to try an offender can be inquired into by habeas corpus, under the law of

the United States, by any judge or court which has a right to issue the writ.

United States *vs.* Rodgers, 23 F., 658.

The question of jurisdiction, in the commitment of persons for either civil or criminal measures is always open and may be inquired into upon proceedings by habeas corpus, either prior to indictment, subsequent to it, or even after a regular prosecution, trial and conviction.

Sec. 222, Church on Habeas Corpus, 2d Ed., Secs. 753-760; U. S. Rev. Stats., Sec. 59, p. 58; *Ex parte* Bain, 121 U. S., 1; *Ex parte* Parks 93 U. S., 18; see form of petition for writ, *Ex parte* Custis, 106 U. S., 371, "We have no general power to review," &c., *Ex parte* Carll, 106 U. S., 521; *Ex parte* Watkins, 7 Peters, 568; *Ex parte* Bridges, 2 Woods, 428; *Ex parte* Shaffersbury, 4 Dill, 271; *Ex parte* Kenyon, 5 Dill, 385; *Ex parte* Geiger, 8 Wall., 85; *Ex parte* Lange, 18 Wall., 163, 178; *In re* Begast, 2 Savoy, 396, 401.

Where the power or jurisdiction exists, its exercise will not be inquired into. Where the proceedings are entirely void, the party may be discharged, but not so where they are voidable only. Errors and irregularities are not reviewable. As to each of these propositions see cases just cited.

It must be borne in mind, in considering this cause, that it has been over seventeen years since the petitioner was indicted, and ever since 1886 he has continuously been a resident of the District of Columbia, and his place of domicile has been well known to the authorities. No steps whatever have been taken for his apprehension save what is disclosed in the record, and on two separate occasions he was discharged after a hearing. While it does not appear in the record, yet it is, nevertheless, a fact that the petitioner is at present in the employ of the United States, and has been since last December,

It certainly does not seem that under these circumstances the ends of justice are sought to be obtained by these continued prosecutions, but as asserted in one of his prior petitions, there is behind this matter efforts to serve personal ends and satisfy personal and political animosity.

It is respectfully submitted that for the various reasons assigned the order of the Court appealed from discharging the petitioner should be affirmed.

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